TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 988.

GEORGE EYSTER, ASSISTANT TREASURER OF THE UNITED STATES AT PHILADELPHIA, APPELLANT,

vs.

THE CENTENNIAL BOARD OF FINANCE, JOSEPH PATTERSON, HENRY LEWIS, JOHN GILL, THE NATIONAL STATE BANK OF CAMDEN, THE INTERNATIONAL EXHIBITION COMPANY, AND THE STATE OF NEW JERSEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED FEBRUARY 6, 1877.

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1 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the third circuit.

THE CENTENNIAL BOARD OF FINANCE, COMPLAINANT,
vs.
JOSEPH PATTERSON AND HENRY LEWIS, CITIZENS OF the State of Pennsylvania; John Gill, a citizen of the State of New Jersey; The National State Bank of Camden, a corporation created by and having its place of business in the State of New Jersey; and George Eyster, Assistant Treasurer of the United States at Philadelphia.

October Session, 1876. No. 64. In Equity.

Pleas and proceedings before the Honorable the Judges of the Circuit Court of the United States in and for the Eastern District of Pennsylvania in the third circuit of October session, 1876, No. 64.

It is thus contained:

2 Be it remembered, that heretofore, to wit, on the fourteenth day of December, in the year of our Lord one thousand eight hundred and seventy-six, came the Centennial Board of Finance, by its solicitors, William Henry Rawle and Benjamin Williamson, esquires, and filed of record in our said court here a bill in equity against Joseph Patterson and Henry Lewis, citizens of the State of Pennsylvania; John Gill, a citizen of the State of New Jersey; The National State Bank of Camden, a corporation created by and having its place of business in the State of New Jersey; and George Eyster, Assistant Treasurer of the United States at Philadelphia, which said bill being read is in the words and of the tenor following, to wit:

In the Circuit Court of the United States for the Eastern District of Pennsylvania, in the third circuit, sitting in equity.

Between—

THE CENTENNIAL BOARD OF FINANCE, COMPLAINANT,
and

3 JOSEPH PATTERSON AND HENRY LEWIS, CITIZENS OF THE State of Pennsylvania; John Gill, a citizen of the State of New Jersey; The National State Bank of Camden, a corporation created by and having its place of business in the State of New Jersey; and George Eyster, Assistant Treasurer of the United States at Philadelphia, Defendants.

Of October Sessions, 1876.—No. 64.

The complainant avers as follows:

I. It is a corporation created under the act of Congress hereinafter referred to, having its only place of business in the city of Philadelphia, in the State of Pennsylvania. The defendants Joseph Patterson and Henry Lewis are citizens of the State of Pennsylva-

nia; the defendant John Gill is a citizen of the State of New Jersey; the defendant The National State Bank of Camden is a corporation created by and having its place of business in the State of New Jersey; and the defendant George Eyster is the Assistant Treasurer of the United States at Philadelphia, aforesaid.

II. By an act of Congress approved March 3d, 1871, entitled "An act to provide for celebrating the one hundredth anniversary of American independence by holding an international exhibition of arts, manufactures, and products of the soil and mine, in the city of Philadelphia and State of Pennsylvania, in the year eighteen hundred and seventy-six," (to which reference is craved,) it was enacted that an exhibition of American and foreign arts, products, and manufactures should be held under the auspices of the government of the United States, in the city of Philadelphia, in the year eighteen hundred and seventy-six; and provision was therein made for the appointment of a commission, whose duties were thereby prescribed.

III. By an act of Congress approved June 1st, 1872, entitled "An act relative to the Centennial International Exhibition to be held in the city of Philadelphia, State of Pennsylvania, in the year eighteen hundred and seventy-six," (to which reference is craved,) after reciting that provision should be made for procuring the funds requisite for the purposes of the said exhibition, it was enacted that certain persons therein named were thereby created "a body corporate, to be known by the name of The Centennial Board of Finance, and by that name to have an incorporate existence until the object for which it is formed shall have been accomplished, and shall be competent to sue and be sued, plead and be impleaded, defend and be defended in all courts of law and equity in the United States."

It was further provided, "that the said corporation shall have authority, and is hereby empowered, to secure subscriptions of capital stock to an amount not exceeding ten million dollars, to be divided into shares of ten dollars each, and to issue to the subscribers of said stock certificates therefor, under the corporate seal of said corporation, which certificates shall bear the signatures of the president and treasurer, and be transferable under such rules and regulations as may be made for the purpose, and it shall be lawful for any municipal or corporate body existing by or under the laws of the United States to subscribe and pay for shares of said capital stock, and the holders of said stock shall become associates in said corporation and shall be entitled to one vote on each share. * * * The proceeds of said stock, together with the receipts from all other sources, shall be used by said corporation for the erection of suitable buildings, with their appropriate fixtures and appurtenances, and for all others expenditures required in carrying out the object of the said act of Congress of March 3d, 1871, and which may be incident thereto."

It was further provided that the stockholders should elect a board of directors, who should elect a president and other officers, and, after the organization of said board, all stock subscription books, with the papers and records of any kind, were directed to be delivered to them by the United States Centennial Commission; and it was made the duty of the Secretary of the Treasury of the United States to cause to be prepared a sufficient number of certificates of stock to meet the requirements of the act.

By its tenth section it was provided, "that as soon as practicable after the said exhibition shall have been closed, it shall be the duty of said corporation to convert its property into cash, and, after the payment of all its liabilities, to divide its remaining assets among its stockholders pro rata, in full satisfaction and discharge of its capital stock. And it shall be the duty of the United States Centennial Commission to supervise the closing up of the affairs
7 of said corporation, to audit its accounts, and submit in a report to the President of the United States the financial result of the Centennial Exhibition.

IV. In conformity with this act and certain supplements thereto, (to which, if necessary, more particular reference is craved,) the board of directors of the corporation complainant was duly organized and entered actively upon the discharge of its duties, and prior to the sixteenth day of February, 1876, had received subscriptions and issued certificates of stock therefor to the amount of about two million of dollars.

The defendant Joseph Patterson is the holder of one hundred shares of said stock; the defendant Henry Lewis is the holder of five hundred shares; the defendant John Gill is the holder of one share, and the defendant The National State Bank of Camden is the holder one hundred shares thereof. Besides these defendants, there is a very large body of stockholders scattered all over the United States, who are interested in the premises, but whom, by reason of their great number and being so scattered, it is inconvenient to make parties hereto, but whom the complainants
8 pray may so be made parties, as far as is possible, if deemed material by the court.

V. By an act of Congress approved February 16th, 1876, entitled "An act relating to the Centennial Celebration of American Independence," (to which reference is craved,) it was provided that "the sum of one million five hundred thousand, to complete the Centennial buildings and other preparations, be, and the same is hereby, appropriated out of any moneys in the United States Treasury not otherwise appropriated, which shall be paid on the drafts of the president and treasurer of the Centennial Board of Finance, one-third immediately after the passage of this act, and the remainder in four equal monthly payments: Provided, That in the distribution of any moneys that may remain in the treasury of the Centennial Board of Finance, after the payment of its debts, as provided

for by the tenth section of the act of Congress approved June 1st, eighteen hundred and seventy-two, incorporating said Centennial Board of Finance, the appropriation hereinbefore made shall be paid in full into the treasury of the United States, before any dividend or percentage of the profits shall be paid to the holders
9 of said stock: Provided, also, That the government of the United States shall not, under any circumstances, be liable for any debt or obligation of the United States Centennial Commission or the Centennial Board of Finance, or any payment in addition to the foregoing sum.

"Section 2. That the money by this act appropriated shall be paid to the treasurer of the Centennial Board of Finance only after he and the president of the board shall have executed a bond in the sum of five hundred thousand dollars to the United States, with sufficient security, to be approved by the Secretary of the Treasury, for the safe-keeping and faithful disbursement of the sum hereby appropriated."

The said security was duly entered, and the said sum of one million five hundred thousand dollars was thereupon paid to the complainant, at the times and in the manner provided.

VI. The Centennial Exhibition was duly held in the city of Philadelphia, from the tenth day of the month of May, until the tenth day of the month of November, 1876, inclusive.

10 The total amount of subscriptions received by the complainant and for which certificates of stock were issued and are still outstanding is two million four hundred thousand dollars, and after payment of all necessary and incidental expenses, there remains for distribution in the hands of the complainant the sum of about two million of dollars.

VII. No profits have resulted from the said exhibition, and the said sum of two million of dollars is insufficient even to repay to the stockholders the amounts subscribed by them respectively.

And, therefore, the defendants Joseph Patterson, Henry Lewis, John Gill, and The National State Bank of Camden, together with said other stockholders, (whom, if necessary, it is prayed may be made parties hereto,) claim and insist that the whole sum of two million dollars should, in accordance with the tenth section of the act of June 1st, 1872, be "divided among its stockholders pro rata, in full satisfaction and discharge of its capital stock," and demand that their pro rata share thereof shall be paid to them accordingly.

11 At the same time, the defendant George Eyster, Assistant Treasurer of the United States at Philadelphia, claims and insists that the United States is entitled to receive from the complainant the sum of one million five hundred thousand dollars, before any amount whatever is paid to the stockholders.

VIII. The complainant has no interest whatever in the fund in dispute, and is, and at all times has been, ready and willing to pay

the same to whomsoever shall appear to be entitled thereto; but, inasmuch as the defendants respectively persist in the assertion of their said adverse claims, the complainant is advised that it cannot, with safety, pay the same to either of them, but that the latter ought to interplead together touching their right thereto, in order that the complainant may know to whom the said fund should properly be paid.

Wherefore, the complainant needs equitable relief, as follows:

1. Process.

2. That the rights of the parties in the premises may be
12 ascertained by decree of this court according to the course and practice of chancery, and to that end that the defendants be ordered to interplead in the usual manner, the complainant hereby offering to make such disposition of the said fund in the meantime as the court shall direct.

3. General relief.

WM. HENRY RAWLE,
B. WILLIAMSON,
For Complainants.

John Welsh, being duly sworn, says, that he is president of the Centennial Board of Finance, and that to the best of his knowledge, information, and belief, the said corporation does not in any respect collude with either of the above-named defendants in this case; nor is in any manner indemnified by the said defendants or either of them; nor has it exhibited its said bill of interpleader at the request of them or either of them, but merely of its own accord, for relief in this court.

JNO. WELSH.

Sworn and subscribed before me, this fourteenth day of December, 1876.

13 [SEAL.] JOHN RODGERS,
Notary Public.

(Endorsed:) No. 64. October sessions, 1876. In the Circuit Court of the United States for the Eastern District of Pennsylvania. In the third circuit. Sitting in equity. Between the Centennial Board of Finance, complainant, and Joseph Patterson and Henry Lewis, citizens of the State of Pennsylvania; John Gill, a citizen of the State of New Jersey; The National State Bank of Camden, a corporation created by and having its place of business in the State of New Jersey; and George Eyster, Assistant Treasurer of the United States at Philadelphia, defendants. Bill in equity.
14 Filed September 14th, 1876. Issue subpœna sec. leg. Wm. Henry Rawle, 710 Walnut street, Philadelphia. B. Williamson, Elizabeth, New Jersey. To the clerk of the circuit court.

for by the tenth section of the act of Congress approved June 1st, eighteen hundred and seventy-two, incorporating said Centennial Board of Finance, the appropriation hereinbefore made shall be paid in full into the treasury of the United States, before any dividend or percentage of the profits shall be paid to the holders
9 of said stock: Provided, also, That the government of the United States shall not, under any circumstances, be liable for any debt or obligation of the United States Centennial Commission or the Centennial Board of Finance, or any payment in addition to the foregoing sum.

"Section 2. That the money by this act appropriated shall be paid to the treasurer of the Centennial Board of Finance only after he and the president of the board shall have executed a bond in the sum of five hundred thousand dollars to the United States, with sufficient security, to be approved by the Secretary of the Treasury, for the safe-keeping and faithful disbursement of the sum hereby appropriated."

The said security was duly entered, and the said sum of one million five hundred thousand dollars was thereupon paid to the complainant, at the times and in the manner provided.

VI. The Centennial Exhibition was duly held in the city of Philadelphia, from the tenth day of the month of May, until the tenth day of the month of November, 1876, inclusive.

10 The total amount of subscriptions received by the complainant and for which certificates of stock were issued and are still outstanding is two million four hundred thousand dollars, and after payment of all necessary and incidental expenses, there remains for distribution in the hands of the complainant the sum of about two million of dollars.

VII. No profits have resulted from the said exhibition, and the said sum of two million of dollars is insufficient even to repay to the stockholders the amounts subscribed by them respectively.

And, therefore, the defendants Joseph Patterson, Henry Lewis, John Gill, and The National State Bank of Camden, together with said other stockholders, (whom, if necessary, it is prayed may be made parties hereto,) claim and insist that the whole sum of two million dollars should, in accordance with the tenth section of the act of June 1st, 1872, be "divided among its stockholders pro rata, in full satisfaction and discharge of its capital stock," and demand that their pro rata share thereof shall be paid to them accordingly.

11 At the same time, the defendant George Eyster, Assistant Treasurer of the United States at Philadelphia, claims and insists that the United States is entitled to receive from the complainant the sum of one million five hundred thousand dollars, before any amount whatever is paid to the stockholders.

VIII. The complainant has no interest whatever in the fund in dispute, and is, and at all times has been, ready and willing to pay

the same to whomsoever shall appear to be entitled thereto; but, inasmuch as the defendants respectively persist in the assertion of their said adverse claims, the complainant is advised that it cannot, with safety, pay the same to either of them, but that the latter ought to interplead together touching their right thereto, in order that the complainant may know to whom the said fund should properly be paid.

Wherefore, the complainant needs equitable relief, as follows:

1. Process.

2. That the rights of the parties in the premises may be
12 ascertained by decree of this court according to the course and practice of chancery, and to that end that the defendants be ordered to interplead in the usual manner, the complainant hereby offering to make such disposition of the said fund in the meantime as the court shall direct.

3. General relief.

WM. HENRY RAWLE,
B. WILLIAMSON,
For Complainants.

John Welsh, being duly sworn, says, that he is president of the Centennial Board of Finance, and that to the best of his knowledge, information, and belief, the said corporation does not in any respect collude with either of the above-named defendants in this case; nor is in any manner indemnified by the said defendants or either of them; nor has it exhibited its said bill of interpleader at the request of them or either of them, but merely of its own accord, for relief in this court.

JNO. WELSH.

Sworn and subscribed before me, this fourteenth day of December, 1876.

13 [SEAL.] JOHN RODGERS,
Notary Public.

(Endorsed:) No. 64. October sessions, 1876. In the Circuit Court of the United States for the Eastern District of Pennsylvania. In the third circuit. Sitting in equity. Between the Centennial Board of Finance, complainant, and Joseph Patterson and Henry Lewis, citizens of the State of Pennsylvania; John Gill, a citizen of the State of New Jersey; The National State Bank of Camden, a corporation created by and having its place of business in the State of New Jersey; and George Eyster, Assistant Treasurer of the United States at Philadelphia, defendants. Bill in equity.
14 Filed September 14th, 1876. Issue subpœna sec. leg. Wm. Henry Rawle, 710 Walnut street, Philadelphia. B. Williamson, Elizabeth, New Jersey. To the clerk of the circuit court.

And afterwards, to wit, on the day and year last aforesaid, a subpœna was issued, which, with the endorsements and return thereto, is in the words and of the tenor following, to wit:

UNITED STATES,
EASTERN DISTRICT OF PENNSYLVANIA. } sct.

[SEAL.]

The President of the United States to Joseph Patterson and Henry Lewis, citizens of the State of Pennsylvania; John Gill,
15 a citizen of the State of New Jersey; The National State Bank of Camden, a corporation created by and having its place of business in the State of New Jersey; and George Eyster, Assistant Treasurer of the United States at Philadelphia.

For certain causes offered before the Circuit Court of the United States in and for the Eastern District of Pennsylvania in the third circuit, we command and strictly enjoin you, and each of you, that, laying all other matters aside, and notwithstanding any excuse, you, and each of you personally, be and appear before the judges of the said court at a session of the same court to be holden at Philadelphia on the first Monday of February next, to answer concerning those things which shall then and there be objected against you, and to do further and receive what the court shall have considered in this behalf. And have you then there this writ. And this you are in nowise to omit, under the penalty of four hundred dollars.

Witness the Honorable Morrison R. Waite, Chief Justice
16 of the Supreme Court of the United States, at Philadelphia, this fourteenth day of December, 1876, and in the one hundred and first year of the independence of the said United States.

SAMUEL BELL,
Clerk of Circuit Court U. S.
per W. VON A. WILLIAMSON.

Note.

The defendants in this case are required to enter their appearance in the clerk's office of said court, on or before the first Monday of February next, otherwise the bill may be taken pro confesso.

No 64.—Circuit Court, October Session, 1876.

THE CENTENNIAL BOARD OF FINANCE, COMPLAINANT, }
vs.
PATTERSON ET AL., DEFENDANTS. }

Subpœna in Equity.

Returnable on the first Monday of February next.

17 WM. HENRY RAWLE, } *Solicitor for*
B. WILLIAMSON, } *Complainants.*

Returned December 22, 1876.

We accept service for the defendants Patterson, Lewis, Gill and National State Bank of Camden, and desire our appearance to be entered for them.

WM. HENRY RAWLE.
B. WILLIAMSON,
per W. H. R.

I, William A. Grissinger, being duly sworn according to law, say, that on the 14th of December I served the within subpœna upon the defendant George Eyster, at his office in the custom-house in the city of Philadelphia, by making known to him the contents thereof and leaving with him a true and attested copy of the same.

WM. A. GRISSINGER.

Sworn and subscribed before me this 22 day of December, 1876.

[SEAL.] SAMUEL BELL,
U. S. Comsr.

18 And afterwards, to wit, on the twenty-second day of December, in the year of our Lord one thousand eight hundred and seventy-six, Joseph Patterson, Henry Lewis, John Gill, and the National State Bank of Camden, defendants as aforesaid, by William Henry Rawle and Benjamin Williamson, esquires, came into our said court here and file their answer to the aforesaid bill in equity, which being read, is in the words and of the tenor following, to wit:

In the Circuit Court of the United States for the Eastern District of Pennsylvania, in the third circuit, sitting in equity.

Between— THE CENTENNIAL BOARD OF FINANCE, COMPLAINANT, *and* JOSEPH PATTERSON AND HENRY LEWIS, CITIZENS OF the State of Pennsylvania; John Gill, a citizen of the State of New Jersey; The National State Bank of Camden, a corporation created by 19 and having its place of business in the State of New Jersey; and George Eyster, Assistant Treasurer of the United States at Philadelphia, defendants.	Of October Sessions, 1876. No. 64.

The joint and several answer of Joseph Patterson, Henry Lewis, John Gill, and the National State Bank of Camden, defendants, to the bill of complaint of the Centennial Board of Finance, complainant.

The defendants, and each of them, reserving to themselves all right of exception to the said bill of complaint, for answer thereto say:

I. We admit the averments contained in the first, second, third, fourth, fifth, sixth, and seventh paragraphs of the complainant's

bill, and believe that the various acts of Congress therein referred to are correctly set forth.

II. We are advised and believe that under the true construction of the act of February 16th, 1876, the funds in the hands of the complainant for distribution should be first applied in payment of the capital stock, and that any surplus thereafter, or, in other words, the profits, if any, resulting from the Centennial Exhibition, in the said bill of complaint mentioned, should then be paid to the United States to the extent of $1,500,000, and the balance of profits, if any, be divided pro rata among the stockholders. But as no profits have resulted from the said Centennial Exhibition, and as the balance in the hands of the complainant is wholly inadequate even to repay the amount of stock subscribed, we aver that the United States is not entitled to participate at all in the distribution of the said fund, but that the same should and ought to be divided among the stockholders pro rata, in satisfaction and discharge of the capital stock, in accordance with the tenth section of the act of June 1st, 1872; and we have demanded, and do demand, that the complainant should so distribute the said fund, and we pray that the court will so order and decree.

JOSEPH PATTERSON.
HENRY LEWIS.
JOHN GILL.
JOHN GILL, *President.* [SEAL.]
J. C. MARTINDALE, *Secretary.*

WM. HENRY RAWLE,
B. WILLIAMSON,
Of Counsel.

Joseph Patterson, being duly affirmed, says, that the facts above set forth, so far as stated upon his own knowledge, are just and true, and so far as stated upon information derived from others, he believes them to be true.

JOS. PATTERSON.

Subscribed and affirmed to before me, this nineteenth day of December, A. D. 1876.

[SEAL.] SAMUEL BELL,
U. S. Commissioner.

Henry Lewis, being duly affirmed, says, that the facts above set forth, so far as stated upon his own knowledge, are just and true, and as far as stated upon information derived from others, he believes them to be true.

HENRY LEWIS.

Subscribed and affirmed to before me, this nineteenth day of December, A. D. 1876.

[SEAL.] SAMUEL BELL,
U. S. Commissioner.

John Gill, being duly affirmed, says, that the facts above set forth, so far as stated upon his own knowledge, are just and
22 true, and so far as stated upon information derived from others, he believes them to be true.

JOHN GILL.

Affirmed and subscribed before me, a United States commissioner, this sixteenth day of December, A. D. 1876.

[SEAL.] MARTIN V. BERGEN,
U. S. Commissioner.

John Gill, being duly affirmed, says, that he is president of the National State Bank of Camden, a corporation created by, and having its place of business in, New Jersey; that the facts above set forth, so far as stated upon his own knowledge, are just and true, and so far as stated upon information derived from others, he believes them to be true. That the seal affixed to the foregoiug answer is the common or corporate seal of the National State Bank of Camden, and that the same was affixed thereto in his presence, as and for the act and deed of the said corporation.

JOHN GILL.

Affirmed and subscribed before me, a commissioner of the United States, this sixteenth day of December, A. D. 1876.

[SEAL.] MARTIN V. BERGEN,
U. S. Commissioner.

23 (Endorsed:) No. 64. October sessions, 1876. In the Circuit Court of the United States for the Eastern District of Pennsylvania. In the third circuit. Between the Centennial Board of Finance, complainant, and Joseph Patterson and Henry Lewis, citizens of the State of Pennsylvania; John Gill, a citizen of the State of New Jersey; The National State Bank of Camden, a corporation created by and having its place of business in the State of New Jersey; and George Eyster, Assistant Treasurer of the United States at Philadelphia, defendants. The joint and several answer of Joseph Patterson, Henry Lewis, John Gill, and
24 The National State Bank of Camden. Filed December 22d, 1876. Wm. Henry Rawle, B. Williamson, of counsel.

And afterwards, to wit, on the fourth day of January, in the year of our Lord one thousand eight hundred and seventy-seven, came George Eyster, Assistant Treasurer of the United States at Philadelphia, one of the defendants as aforesaid, by John K. Valentine, esquire, comes into our said court, have and files his answer to the aforesaid bill in equity, which being read is in the words and of the tenor following, to wit:

In the Circuit Court of the United States for the Eastern District of Pennsylvania, in the third circuit, sitting in equity.

Between—

THE CENTENNIAL BOARD OF FINANCE, COMPLAINANT,
and
JOSEPH PATTERSON AND HENRY LEWIS, citizens of the State of Pennsylvania; John Gill, a citizen of the State of New Jersey; The National State Bank of Camden, a corporation created by and having its place of business in the State of New Jersey; and George Eyster, Assistant Treasurer of the United States at Philadelphia, Defendants.

October Sessions, 1876. No. 64.

The answer of George Eyster, Assistant Treasurer of the United States at Philadelphia, one of the defendants to the bill of complaint of the Centennial Board of Finance, complainant.

The defendant, George Eyster, reserving to himself all right of exception to the said bill of complaint, for answer thereto says:

I. He admits the averments contained in the first, second, third, fourth, fifth, and sixth paragraphs of the complainant's bill, and believes that the various acts of Congress therein referred to are correctly set forth.

II. He is advised and believes that under the true construction of the act of February 16, 1876, the funds in the hands the
26 complainant for distribution should be first applied in payment in full into the treasury of the United States of the sum of $1,500,000, before any distribution whatever is made among the stockholders, and that after the payment of the said sum $1,500,000 to the United States, that any assets remaining should be divided pro rata among the said stockholders. That after paying all debts and liabilities of said corporation, the surplus remaining in the hands of the said Centennial Board of Finance, and referred to in the seventh paragraph of the said complainant's bill, is profits according to the true intent and meaning of the several acts of Congress referred to in said bill; and he avers that the said stockholders are not entitled to participate at all in the distribution of the said funds until the said sum of $1,500,000 shall first have been paid in full into the treasury of the United States. And he has demanded on behalf of the said United States, and does demand, that the complainant should so pay the said sum of $1,500,000 to the said United States, and he prays that the court will so order and decree, and that he be hence dismissed with his reasonable costs and charges.

27 GEORGE EYSTER,

JOHN K. VALENTINE, *Counsel.* *Asst. Treasurer U. S.*

George Eyster, being duly sworn, says that the facts set forth in the foregoing answers, so far as stated upon his own knowledge, are

just and true, and so far as stated from information derived from others, he believes them to be true.

GEORGE EYSTER.

Sworn and subscribed to before me, this third day of January, A. D. 1877.

SAMUEL BELL,
U. S. Commissioner.

(Endorsed:) No. 64. October sessions, 1876. In the United States Circuit Court for the Eastern District of Penna. In the third circuit. Between The Centennial Board of Finance,
28 complainant, and Joseph Patterson and Henry Lewis, citizens of the State of Pennsylvania; John Gill, a citizen of the State of New Jersey; The National State Bank of Camden, a corporation created by and having its place of business in the State of New Jersey; and George Eyster, Assistant Treasurer of the United States at Philadelphia, defendants. Answer of George Eyster, Assistant Treasurer of the United States at Philadelphia, one of the defendants. Filed January 4, 1877. John K. Valentine, counsel.

Afterwards, to wit, on the fifth day of January, in the year of our Lord one thousand eight hundred and seventy-seven, the petition of the State of New Jersey, praying to be made a party defendant, is presented by its attorney-general, Jacob Vanatta, esquire, which petition being read and filed is in the words and of the tenor following, to wit:

29 In the Circuit Court of the United States for the Eastern District of Pennsylvania. For the third circuit.

Between—

THE CENTENNIAL BOARD OF FINANCE, COMPLAINANT,
and
JOSEPH PATTERSON AND HENRY LEWIS, CITIZENS OF the State of Pennsylvania; John Gill, a citizen of the State of New Jersey; The National State Bank of Camden, a corporation created by and having its place of business in the State of New Jersey; and George Eyster, Assistant Treasurer of the United States at Philadelphia, Defendants.

Of October Sessions, 1876. No. 64.

The petition of the State of New Jersey respectfully represents: On the fourteenth day of December, 1876, a bill in equity, entitled as above, was filed in this court by the above-named complainant, setting forth that a sum of $2,000,000 remained in its hands for distribution; that the said sum was claimed by the
30 stockholders of the said complainant, and also by the United States, and praying that the relative rights of the defendants might be ascertained in the premises. Your petitioner is the holder

of ten thousand shares of stock in the said corporation, and as its rights will be affected by any decree made in this case, it prays that it may be admitted as party defendant hereto, according to the usual course and practice of chancery.

{ Seal of the State of New Jersey. } Attest: HENRY C. KELSEY,
Secretary of State.

Henry C. Kelsey, of the State of New Jersey, being duly sworn, says that the facts above set forth are just and true, to the best of his knowledge, information, and belief. That the seal affixed to the foregoing petition is the seal of the State of New Jersey, and that the same was affixed thereto by the order of the governor, in his presence, as and for the act and deed of the said state.

HENRY C. KELSEY.

Sworn and subscribed before me, this second day of January, A. D. 1877.

[SEAL.] WILLIAM N. NUTT,
Notary Public.

31 (Endorsed:) No. 64. October sessions, 1876. Circuit Court of the United States. Third circuit. The Centennial Board of Finance vs. Joseph Patterson et al. Petition of the State of New Jersey to intervene as defendant. Jacob Vanatta, Attorney-General of New Jersey. Filed Jan'y 5th, 1877.

Whereupon, afterwards, to wit, on the sixth day of January, in the year of our Lord one thousand eight hundred and seventy-seven, present Hon. William Strong, Associate Justice of the Supreme Court of the United States, and Hon. William McKennan, Circuit Judge, the following proceedings were had, to wit:

In the Circuit Court of the United States in the Eastern Dis-
32 trict of Pennsylvania. In the third circuit.

THE CENTENNIAL BOARD OF FINANCE
vs.
JOSEPH PATTERSON ET AL.

And now, this sixth day of January, A. D. 1877, the petition of the State of New Jersey to intervene as party defendant in this case is hereby granted, and it is ordered, adjudged, and decreed that the State of New Jersey aforesaid be considered as though originally joined as defendant hereto, and in that capacity have leave to file its answer.

(Endorsed:) 64. October, 1876. Circuit Court. The Centennial Board of Finance vs. Joseph Patterson. Decree allowing the State of New Jersey to intervene as party defendant. Filed January 6, 1877.

And thereupon the State of New Jersey, by its attorney-general, Jacob Vanatta, esquire, comes into our said court and files its answer to the aforesaid bill in equity, which being read is
33 in the words and of the tenor following, to wit:

In the Circuit Court of the United States for the Eastern District of Pennsylvania. In the third circuit. Sitting in equity.

Between—

THE CENTENNIAL BOARD OF FINANCE, Complainant, *and* JOSEPH PATTERSON ET AL., DEFENDANTS.	October Sessions, 1876. No. 64.

The separate answers of the State of New Jersey, defendant, to the bill of complaint of the Centennial Board of Finance, complainant.

I. The defendant admits the averments in the first, second, third, fourth, fifth, sixth, and seventh paragraphs of the complainant's bill, and is advised that the various acts of Congress therein referred to are correctly set forth.

34 II. The defendant is advised that under the true construction of the act of February 16th, 1876, the funds in the hands of the complainant for distribution should be first applied in payment of the capital stock, and that any surplus thereafter, or in other words, the profits, if any, resulting from the Centennial Exhibition, in the said bill of complaint mentioned, should then be paid to the United States to the extent of $1,500,000, and the balance of profits, if any, be divided pro rata among the stockholders. But as no profits have resulted from the said Centennial Exhibition, and as the balance in the hands of the complainant is wholly inadequate even to repay the amount of stock subscribed, the defendant is advised that the United States is not entitled to participate at all in the distribution of the said fund, but that the same should, and of right ought to be, divided among the stockholders pro rata, in satisfaction and discharge of the capital stock, in accordance with the tenth section of the act of June 1st, 1872. And the defendant has demanded, and does demand, that the complainant should so
35 distribute the said fund, and prays the court will so order and decree.

JACOB VANATTA,
Attorney-General of New Jersey.

Affixed and sealed by order of the governor.

Seal of the State of New Jersey.

HENRY C. KELSEY,
Secretary of State.

(Endorsed:) No. 64. October sessions, 1876. Circuit Court of the United States. Third circuit. The Centennial Board of Finance

vs. Joseph Patterson et al. Answer of the State of New Jersey. Jacob Vanatta, Attorney-General of New Jersey. Filed January 6th, 1877.

36 Afterwards, to wit, on the day and year last aforesaid, the petition of the International Exhibition Company, praying to be made a party defendant, is presented by its solicitor, Robert N. Willson, esquire, which being read and filed in the words and of the tenor following, to wit:

In the Circuit Court of the United States for the Eastern District of Pennsylvania. For the third circuit.

Between—

THE CENTENNIAL BOARD OF FINANCE, Complainant,

and

JOSEPH PATTERSON AND HENRY LEWIS, CITIZENS of the State of Pennsylvania; John Gill, a citizen of the State of New Jersey; The National State Bank of Camden, a corporation created by and having its place of business in the State of New Jersey; and George Eyster, Assistant Treasurer of the United States at Philadelphia, Defendants.

Of October Sessions, 1876. No. 64.

37 The petition of the International Exhibition Company, a corporation created by and having its place of business in the State of Pennsylvania, respectfully represents:

I. Your petitioner is a corporation created by and having its place of business in the State of Pennsylvania.

II. On the fourteenth day of December, 1876, a bill in equity, entitled as above, was filed in this court by the above-named complainant, setting forth that a sum of $2,000,000 remained in its hands for distribution; that the said sum was claimed by the stockholders of the said complainant, and also by the United States, and praying that the relative rights of the defendants might be ascertained in the premises.

III. Your petitioner is the holder of nine shares of the stock of the said corporation complainant, and is contingently entitled to receive, hold, and possess the amount which shall be distributed by the said corporation complainant upon fifty thousand and more other shares of said stock, and as its rights will be affected by any

38 decree made in this case, it prays that it may be admitted as a party defendant hereto, according to the usual course and practice of chancery.

[Corporate Seal.] CLEMENT M. BIDDLE, *President.*

Attest: JACOB JANNEY, *Secretary.*

Clement M. Biddle, being duly affirmed, says that he is president of the aforesaid corporation, the International Exhibition Company, a corporation created by and having its place of business in the State of Pennsylvania; that the facts above set forth are just and true, to the best of his knowledge, information, and belief; that the seal affixed to the foregoing petition is the common and corporate seal of the International Exhibition Company, and that the same was affixed thereto in his presence, as and for the act and deed of the said International Exhibition Company.

CLEMENT M. BIDDLE,

39 Affirmed and subscribed before me, this fourth day of January, A. D. 1877.

SAMUEL BELL,
United States Commissioner.

(Endorsed:) No. 64. October sessions, 1876. Circuit Court of the United States. Third circuit. The Centennial Board of Finance vs. Joseph Patterson et al. Petition of the International Exhibition Company to intervene as defendant. Robert N. Willson, of counsel. Filed January 6th, 1877.

Whereupon, afterwards, to wit, on the day and year last aforesaid, present Honorable William Strong, Associate Justice of
40 the Supreme Court of the United States, and Honorable William McKennan, Circuit Judge, the following proceedings were had, to wit:

THE CENTENNIAL BOARD OF FINANCE *vs.* JOSEPH PATTERSON ET AL. } U. S. C. C. In Equity. Oct. Sessions, 1876. No. 64.

And now, January 6th, 1877, the petition of the International Exhibition Company ask leave to intervene as party defendant in the above stated cause, being before the court, it is ordered by the court that such leave is hereby granted, and that the said company may file its answer to the bill of complaint forthwith.

(Endorsed;) No. 64. Oct. sess., 1876. C. C. U. S. E. D. of Pa. The Centennial Board of Finance vs. Patterson et al. Order for International Exhibition Company to intervene. Filed January 6th, 1877.

And whereupon the International Exhibition Company, by its solicitor, Robert N. Willson, esquire, comes into our said court
41 here and files its answer to the aforesaid bill in equity, which being read is in the words and of the tenor following, to wit:

In the Circuit Court of the United States for the Eastern District of Pennsylvania. In the Third Circuit. Sitting in Equity.

Between—
THE CENTENNIAL BOARD OF FINANCE, COMPLAINANT,
and
JOSEPH PATTERSON ET AL., DEFENDANTS.
} October Sessions, 1876. No 64.

The separate answer of the International Exhibition Company, a corporation created by and having its place of business in the State of Pennsylvania, defendant, to the bill of complaint of the Centennial Board of Finance, complainant.

The defendant, reserving to itself all right of exception to the said bill of complaint, for answer thereto says:

42 I. This defendant admits the averments contained in the first, second, third, fourth, fifth, sixth, and seventh paragraphs of the complainant's bill, and is advised that the various acts of Congress therein referred to are correctly set forth.

II. This defendant is the holder of nine shares of the stock of the said corporation complainant, and is contingently entitled to receive, hold, and possess the amount which shall be distributed by the said corporation complainant upon fifty thousand and more other shares of the said stock.

III. The defendant is advised that under the true construction of the act of February 16th, 1876, the funds in the hands of the complainant for distribution should be first applied in payment of the capital stock, and that any surplus thereafter, or, in other words, the profits, if any, resulting from the Centennial Exhibition, in the said bill of complaint mentioned, should then be paid to the United States to the extent of $1,500,000, and the balance of profits, if any, be divided pro rata among the stockholders. But as no profits have resulted from the said Centennial Exhibition, and as
43 the balance in the hands of the complainant is wholly inadequate even to repay the amount of stock subscribed, the defendant is advised that the United States is not entitled to participate at all in the distribution of the said fund, but that the same should, and of right ought to, be divided among the stockholders pro rata, in satisfaction and discharge of the capital stock, in accordance with the tenth section of the act of June 1st, 1872; and the defendant has demanded, and does demand, that the complainant should so distribute the said fund, and prays that the court will so order and decree.

[Corporate Seal.] CLEMENT M. BIDDLE, *President.*
Attest: JACOB JANNEY, *Secretary.*

ROBERT N. WILLSON,
Of Counsel.

Clement M. Biddle, being duly affirmed, says, that he is president of the aforesaid corporation, the International Exhibition Company,

a corporation created by and having its place of business in
44 the State of Pennsylvania; that the facts above set forth, so far as stated upon his own knowledge, are just and true, and so far as stated upon information derived from others, he believes them to be true; that the seal affixed to the foregoing answer is the common or corporate seal of the said International Exhibition Company, and that the same was affixed thereto in his presence, as and for the act and deed of the said corporation.

CLEMENT M. BIDDLE.

Affirmed and subscribed before me, this sixth day of January, A. D. 1877.

SAMUEL BELL,
United States Commissioner.

(Endorsed:) No. 64. October session, 1876. Circuit Court of the United States. Third circuit. The Centennial Board of
45 Finance vs. Joseph Patterson et al. Separate answer of the International Exhibition Company. Robert N. Willson, of counsel. Filed January 6th, 1877.

Now afterwards, to wit, on the day and year last aforesaid, before the Honorable William Strong, Associate Justice of the Supreme Court of the United States, and the Honorable William McKennan, circuit judge, having been brought to a final hearing upon the pleadings, and the court having heard the argument of the respective counsel, takes the same under consideration.

Opinion of the court, Strong, Justice. Filed on the 19th day of January, 1877.

Opinion by Strong, J., January 19th, 1877.

This is a bill for an interpleader. The complainants have in hand the sum of about $2,000,000, of which they are trustees, for distribution, and to which there are conflicting claims. The
46 State of New Jersey, the International Exhibition Company, Joseph Patterson, and numerous other private persons, are stockholders of the corporation created by the act of Congress, June 1st, 1872, under the name of the Centennial Board of Finance, and they claim that the whole fund should be distributed among the stockholders. On the other hand, the United States, represented by the assistant treasurer, claim that, before any payment to the stockholders, the sum of $1,500,000 should be paid into the United States Treasury. The case is a proper one for the adjudication of this court. The parties litigant are before us, and they have answered the bill, asserting their claims. Though all the stockholders are not of record, they are all represented, and the United States has submitted the matter in dispute to our determination.

The rights of the contending parties grow out of several acts of Congress, to which we shall refer. On the 3d of March, 1871, an

act was passed, by the preamble of which it was declared that it behooved the people of the United States to celebrate by appropriate ceremonies the centennial anniversary of the declaration of independence, and it was fitting the completion of the first century of our national existence should be commemorated by an ex-
47 hibition of the natural resources of the country and their development, and of its progress in those arts which benefit mankind, in comparison with those of other nations, and that, as the exhibition should be a national celebration, in which the people of the whole country should participate, it should have the sanction of the Congress of the United States. It was, therefore, enacted that a commission, consisting of not more than one delegate from each state and territory, should be appointed by the President of the United States, on the nomination of the governors of the states and territories respectively, whose duty it should be to prepare and superintend the execution of a plan for holding the exhibition in Philadelphia. The commission was also required to report to Congress a suitable date for opening and closing the exhibition, a schedule of appropriate ceremonies, a plan or plans of the buildings, a complete plan for the reception and classification of articles intended for exhibition, and the requisite custom-house regulations for the introduction into the country of the articles from foreign countries intended for exhibition. Provision was also made for notice to the diplomatic representatives of foreign nations, and of the regulations that might be adopted by the commissioners,
48 by a proclamation of the President, in order that the time and place of holding the exhibition, and the regulations therefor, might be published in their respective countries.

This act, though it declared the United States should not be liable for any expenses attending the exhibition, or by reason thereof, plainly recognized it as a national celebration, in which the whole country should participate, and gave to it the sanction of Congress. —(16 Statutes at Large, 470.)

It was followed by another act, approved June 1st, 1872, 17 Stats., 203, which, after premising that such provision should be made for procuring the requisite funds as would enable all the people of the United States to aid in the preparation and conduct of the exhibition and memorial celebration, created the complainants a body corporate, to be known as the Centennial Board of Finance, and to continue to have a corporate existence until the object for which it was formed should be accomplished. The corporators were taken from every state and territory. A capital stock not exceeding $10,000,000, divided into shares of $10 each, was authorized, and stock certificates, prepared by the Secretary of the Treasury, were directed to be issued to the subscribers for the stock. The proceeds of all such subscriptions were directed to be used
49 for the expenditures required in carrying out the object of the act of March 3, 1871; and the corporation was em-

powered to borrow money, to issue bonds therefor, not in excess of its capital stock, and to secure the payment of the same, principal and interest, by mortgage upon its property and prospective income. By the 10th section it was enacted, "that as soon as practicable after the said exhibition shall have closed, it shall be the duty of said corporation to convert its property into cash, and, after the payment of all its liabilities, to divide its remaining assets among its stockholders, in full satisfaction and discharge of its capital stock," and it was made the duty of the Centennial Commission to supervise the closing up the affairs of the corporation, to audit its accounts, and to submit to the President a report of the financial results of the Centennial Exhibition.

Thus it plainly appears, not only that the exhibition was a national one, set on foot and sanctioned by Congress, but that the Centennial Commission and the Centennial Board were made the agents of the government in preparing and conducting it.

Under this legislation the corporation was authorized, and
50 stock subscriptions, for which certificates were issued, to the amount of about $2,400,000 were made which were still outstanding. The subscriptions were made in reliance upon the provisions of the act of Congress. The number of subscribers was very large, and they were scattered all over the United States, holding the stock in various amounts, from one share to ten thousand, the number held by the State of New Jersey.

Such has been the action of Congress, and such were the rights of the stockholders when the act of February 16th, 1876, was enacted, out of which arises the controversy in this case. Its preamble is significant. After referring to the act of March 3, 1871, and the act of June 1, 1872, and after reciting that the President of the United States, in compliance with a joint resolution of Congress, approved June 5, 1874, had extended to foreign nations, in the name of the United States, an invitation to take part in the International Exhibition to be held in Philadelphia under the auspices of the government, and after reciting that the governments so invited, to the number of thirty-eight, had accepted the invitation and were making extensive preparations to embrace the courtesy so ex-
51 tended to them, "thereby rendering proper arrangements for the coming ceremonies on the part of the government of the United States a matter of honor and good faith," the preamble asserted that the preparations designed by the United States Centennial Commission, and in part executed by the Centennial Board of Finance, were in accordance with the spirit of the acts of Congress relating thereto, and on a scale creditable to the government and the people of the United States. It was, therefore, enacted as follows: "That the sum of $1,500,000, to complete the Centennial buildings and other preparations, be, and the same is hereby, appropriated out of any moneys in the United States treasury not otherwise appropriated, which shall be paid on the drafts of the president

and treasurer of the Centennial Board of Finance, one-third immediately after the passage of this act, and the remainder in four equal monthly payments; provided, that in the distribution of any moneys that may remain in the treasury of the Centennial Board of Finance after the payment of its debts, as provided for by the tenth section of the act of Congress approved June 1, 1872, incorporating said Centennial Board of Finance, the appropriation hereinbefore made shall be paid in full into the treasury of the
52 United States before any dividend or percentage of the profits shall be paid to the holders of said stock; provided, also, that the government of the United States shall not, under any circumstances, be liable for any debt or obligation of the United States Centennial Commission or the Centennial Board of Finance, or any payment *in addition to the foregoing sum.*"

The appropriation was avowedly made to complete the necessary preparations for a celebration and exhibition which Congress had declared national and under its sanction, in which other nations had been invited by the government to join, and the proper arrangements for which the preamble to the act declared to be a matter of honor and good faith on the part of the government of the United States.

It was, therefore, meeting at least an honorable obligation, and that it was so considered may be inferred from the closing words of the section, which declared that the United States should not be liable for any obligation or payment "in addition to the sum appropriated."

A careful inspection of this act, under which alone the United States asserts a claim to any portion of the fund in the
53 hands of the complainants, makes it evident that Congress did not intend thereby to create the relation of debtor and creditor between the Centennial Board of Finance and the United States. The language used is the ordinary language of an appropriation, not of a loan. No evidences of debt were required from the board.

Bonds were not exacted for the return of the money, though by the act of 1872 the board was empowered to borrow money and give bonds therefor, and though the president of the board was required by the second section of this act to execute a bond with sufficient security, in the sum of $500,000, conditioned for the safekeeping and faithful disbursement of the sum appropriated.

Were it not for the proviso relative to the distribution of any moneys that might remain in the treasury of the board, or (as they are called in the act of 1872) remaining assets, "after the payment of all its liabilities," there could be no pretence that the act was anything more than a mere appropriation demanded by the honor and good faith of the government.

54 But even the proviso repels the idea that the board became a debtor by receiving the sum appropriated. It re-

serves no right to the United States until the debts of the board shall have been paid.

It is only after the payment of its debts, not after the payment of its *other* debts, but after all its debts shall have been satisfied, that any payment into the treasury of the United States is required to be made. If the appropriation was intended to be a loan merely, it created a debt and was demandable as such, without adding the words "after payment of its debts." It would be an absurd meaning to attribute to Congress that they intended to say that after the payment of its debts the board shall pay another one of its debts.

And if it had been intended the board should be a debtor for the amount of the appropriation, but that its payment should be postponed till the other debts were paid, the language used would have been, "after its other debts are discharged," or words equivalent.

It seems plain, therefore, even from the reading of the proviso, that it was not the purpose of Congress to assume for the government the position of a creditor.

55 This was carefully avoided. Congress had in view the fact that at the close of the exhibition, its agents, the corporation, would wind up, and after paying its debts would distribute its remaining assets, and the proviso reserves nothing more than a right to be a possible distributee of a portion of those assets. It was not known how large they would be; whether they would suffice to repay what the stockholders had paid in and profits on their investments, or not. It may have been supposed that the exhibition would yield profits on the investment.

If, then, the appropriation was not intended to have the character of a loan, creating a debt of the board, and to be paid as a debt, the stockholders who subscribed for the stock have, by the tenth section of the act of 1872, a clear right to the remaining assets, at least to the extent of their capital invested.

That section enacted, as we have seen, that after the close of the exhibition it should be the duty of the board to convert its property into cash, and after the payment of all its liabilities, (or debts as they are called in the act of 1876,) to divide its remaining

56 assets pro rata among the stockholders, in full satisfaction and discharge of its capital stock.

The stockholders were thus entitled to a satisfaction of their stock out of whatever assets remained after the payment of the debts of the corporation.

It is not to be assumed that Congress intended to take away those rights without the consent of the stockholders. The directors of the corporation could not bargain them away. And there are no words of repeal in the later act; nor is there any necessary implication of an intent to repeal. The proviso, therefore, must receive a construction consistent, so far as possible, with the provisions of the act of 1872.

Its direction is that, after paying the debts of the Centennial Board,

the appropriation shall be paid in full into the treasury of the United States before any dividend or percentage of the profits shall be paid to the holders of the stock. What is here meant by dividend or percentage of profits? It is observable that in all the legislation respecting the Centennial Exhibition the word "profits" here first appears. In the act of 1872 the residue after payment
57 of the liabilities was called "remaining assets," and in a former part of this act it was called "moneys that remain." But when the fund is mentioned, to which the United States may resort in case there is such a fund, it is called "profits."

The phraseology is changed and with it, we think, the meaning.

So far as the United States has rights as a distributee, the subject for distribution is "profits," not "remaining assets," not capital. Before any dividend or percentage or proportion of the profits may be paid to the stockholders, the appropriation must be paid into the United States treasury.

If there are no profits the government has no claim.

Now, what are the profits of a corporation that has a capital stock? Very plainly only what has been gained beyond the stock. They are always acquisitions beyond the investments or expenditures.

Nobody would think a tax on the profits of a bank or an insurance company, or, indeed, of any corporation, was a tax on its capital or on its entire property, if that property had been converted into cash in the process of winding up.

58 Congress in the proviso is speaking of the profits of a corporation, and it is to them, and them only, it sets up a claim.

But in this case there were no profits. The assets remaining after the payment of debts, and now for distribution, are only remnants of the capital and insufficient to return what the stockholders paid in.

We think the word dividend, as well as the word percentage, points to profits and not to capital. They are synonymous, as here employed.

That the word dividend is sometimes used to describe a distribution of capital, may be admitted, but such an use is abnormal. It is more commonly used to denote a division of profits, and very evidently it was so employed in this proviso.

It was not said dividend unqualifiedly, or dividend of the remaining assets, or dividend of moneys that remain after payments of debts, but it was used in connection with profits—"dividend or percentage of the profits;" that is, as we understand the phrase, dividend, portion, or percentage of the profits. If it was intended to embrace a division of all the money remaining in the treasury of the board, why were the words "or percentage of the profits"
59 added? If the amount appropriated was meant to be paid before the stockholders could get anything, those added words were totally unnecessary and unmeaning. The introduction of the word profits could have had no other object than to designate

the subject of the dividend or percentage. If it was intended to give the United States a prior claim on the entire remaining assets, it would have been sufficient to have said before any dividend or division shall be made among the stockholders, and we are not at liberty to say the added words have no meaning.

For these reasons, we are of opinion that the fund in the treasury of the Centennial Board of Finance should be distributed pro rata among the stockholders of the corporation, as directed by the tenth section of the act of 1872; and as it is insufficient to pay to the stockholders the full amount invested by them as stockholders, as no part of it is made up of profits, the case contemplated in the proviso has not arisen, and the United States is entitled to no part of the fund.

Let a decree be prepared accordingly.

60 (Endorsed:) The Centennial Board of Finance vs. Joseph Patterson et al.

Whereupon, afterwards, to wit, on the nineteenth day of January, in the year of our Lord one thousand eight hundred and seventy-seven, present Honorable John Calwalader, District Judge, the following proceedings were had, to wit:

Decree.

THE CENTENNIAL BOARD OF FINANCE	Circuit Court of the U. S. Eastern District Pennsylvania. In Equity. October Sessions, 1876.
vs.	
PATTERSON ET AL.	No. 64.

And now, January 19th, 1877, this case having been heard upon the bill and answers, and having been argued by counsel, whereupon, in consideration thereof, it is ordered and decreed that the complainants do pay and distribute the fund in their hands
61 to and among the several and respective stockholders of the complainant, pro rata, according to the true intent and meaning of the act of Congress approved the 16th day of February, 1876; and it appearing that the said fund is not sufficient to pay to the said stockholders the full amount invested by them, it is ordered that no part of the said fund be paid into the treasury of the United States.

And it is further ordered, that upon such payment and distribution among the said stockholders being made, the complainant do stand discharged of and from all liability in the premises.

And it is further ordered that the costs in this cause be paid out of the said fund.

And afterwards, to wit, on the thirteenth day of January, in the year of our Lord one thousand eight hundred and seventy-seven, came the defendant George Eyster, by his solicitor, John K. Valen-

tine, esquire, in open court presents a petition for an appeal, which said petition is in the words and of the tenor following, to wit:

62 In the Circuit Court of the United States and for the Eastern District of Pennsylvania, in the third circuit, October sessions, 1876. No. 64.

THE CENTENNIAL BOARD OF FINANCE
vs.
JOSEPH PATTERSON AND HENRY LEWIS, CITIZENS OF THE STATE OF Pennsylvania; John Gill, a citizen of the State of New Jersey; The National State Bank of Camden, a corporation created by and having its place of business in the State of New Jersey; The International Exhibition Company, The State of New Jersey, and George Eyster, Assistant Treasurer of the United States at Philadelphia.

And now, this thirtieth day of January, 1877, the said George Eyster, Assistant Treasurer of the United States at Philadelphia, by John K. Valentine, esq., his attorney, prays leave to appeal from the decree of the court in this cause entered on the nineteenth day of January, 1877, to the Supreme Court of the United States.

63 Whereupon, it is ordered by the court that the same be allowed.

(Endorsed:) 64. October sessions, 1876. Circuit Court United States Eastern District of Pennsylvania. In the third circuit. The Centennial Board of Finance vs. Joseph Patterson et al. Allowance of appeal of George Eyster, Assistant Treasurer of the United States at Philadelphia.

United States of America, to the Centennial Board of Finance, and Joseph Patterson and Henry Lewis, citizens of the State of Pennsylvania; John Gill, a citizen of the State of New
64 Jersey; The National State Bank of Camden, a corporation created by and having its place of business in the State of New Jersey; The International Exhibition Company, and The State of New Jersey, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to an appeal taken by George Eyster, Assistant Treasurer of the United States at Philadelphia, from the final decree rendered by the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the third circuit, to show cause, if any there be, why the said decree should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness my hand, this thirtieth day of January, in the year of our Lord one thousand eight hundred and seventy-seven (1877).

JOHN CALWALADER, *Judge.*

65 (Endorsed:) I accept service of the within citation on behalf of the International Exhibition Company, one of the defendants named therein. Robert N. Willson. January 30th, 1877. We accept service for the complainants and for the other defendants. Wm Henry Rawle. B. Williamson, per W. H. R. No. 64. October sess., 1876. Centennial Board of Finance vs. Patterson et al. Citation and appeal.

66 UNITED STATES OF AMERICA, } ss.
EASTERN DISTRICT OF PENNSYLVANIA. }

I, Samuel Bell, clerk of the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the third circuit, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals and are correct transcripts therefrom, now on file and remaining of record in my office, being a full and complete copy of the record and proceedings in the suit of The Centennial Board of Finance vs. Joseph Patterson et al., &c. In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Philadelphia in said district, this thirty-first day of January, in the year of our Lord one thousand eight hundred and seventy-seven, and of the independence of the said United States the one hundred and first.

[SEAL.] SAMUEL BELL, *Clerk.*

(Endorsement on cover:) E. Penn. C. C. U. S. No. 988. George Eyster, Assistant Treasurer of the United States at Philadelphia, Appellant, vs. The Centennial Board of Finance, Joseph Patterson, Henry Lewis, John Gill, The National State Bank of Camden, The International Exhibition Company, and the State of New Jersey. Filed 6th February, 1877.

In the Supreme Court of the United States.

OCTOBER TERM, 1876.

GEORGE EYSTER, ASSISTANT TREASURER OF THE UNITED STATES AT PHILADELPHIA, APPELLANT,
vs.
THE CENTENNIAL BOARD OF FINANCE ET ALS. } No. 988.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Brief for the Appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1876.

GEORGE EYSTER, ASSISTANT TREASURER of the United States at Philadelphia, appellant,
vs.
THE CENTENNIAL BOARD OF FINANCE *et als.*
No. 988.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR THE APPELLANT.

STATEMENT.

The simple question to be now determined is whether or not the United States is entitled to be re-imbursed the $1,500,000 advanced under the act of February 16, 1876, to the Centennial Board of Finance, out of the moneys in the hands of the board, it being less than the amount of stock subscribed by other parties to the enterprise. The manner in which and the legislation out of which this question arises are as below stated.

The statutes are given in the order of their enactment.

"CHAPTER CV.—AN ACT to provide for celebrating the one hundredth anniversary of American Independence, by holding an international exhibition of arts, manufactures, and products of the soil and mine, in the city of Philadelphia, and State of Pennsylvania, in the year eighteen hundred and seventy-six.

"Whereas the Declaration of Independence of the United States of America was prepared, signed, and promulgated in the year seventeen hundred and seventy-six, in the city of Philadelphia; and whereas it behooves the people of the United States to celebrate, by appropriate ceremonies, the centennial anniversary of this memorable and decisive event, which constituted the fourth day of July, anno Domini seventeen hundred and seventy-six the birthday of the nation; and whereas it is deemed fitting that the completion of the first century of our national existence shall be commemorated by an exhibition of the natural resources of the country and their development, and of its progress in those arts which benefit mankind, in comparison with those of older nations; and whereas no place is so appropriate for such an exhibition as the city in which occurred the event it is designed to commemorate; and whereas, as the exhibition should be a national celebration, in which the people of the whole country should participate, it should have the sanction of the Congress of the United States: Therefore,

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That an exhibition of American and foreign arts, products, and manufactures shall be held, under the auspices of the Government of the United States, in the city of Philadelphia, in the year eighteen hundred and seventy-six.

"SEC. 2. That a commission, to consist of not more than one delegate from each State and from each Territory of the United States, whose functions shall continue until the close of the exhibition, shall be constituted, whose duty it shall be to prepare and superintend the execution of a plan for holding the exhibition, and, after conference with the authorities of the city of Philadelphia, to fix upon a suitable site within the corporate limits of the said city where the exhibition shall be held.

"SEC. 3. That said commissioners shall be appointed within one year from the passage of this act by the President of the United States, on the nomination of the governors of the States and Territories respectively.

"SEC. 4. That in the same manner there shall be appointed one commissioner from each State and Territory of the United States, who shall assume the place and perform the duties of such commissioner or commissioners as may be unable to attend the meetings of the commission.

SEC. 5. That the commission shall hold its meetings in the city of Philadelphia, and that a majority of its members shall have full power to make all needful rules for its government.

"SEC. 6. That the commission shall report to Congress at the first session after its appointment a suitable date for opening and for closing the exhibition; a schedule of appropriate ceremonies for opening or dedicating the same; a plan or plans of the buildings; a complete plan for the reception and classification of articles intended for exhibition; the requisite custom-house regulations for the introduction into this country of the articles from foreign countries intended for exhi-

bition; and such other matters as in their judgment may be important.

"SEC. 7. That no compensation for services shall be paid to the commissioners or other officers provided by this act from the Treasury of the United States; and the United States shall not be liable for any expenses attending such exhibition or by reason of the same.

"SEC. 8. That whenever the President shall be informed by the governor of the State of Pennsylvania that provision has been made for the erection of suitable buildings for the purpose, and for the exclusive control by the commission herein provided for of the proposed exhibition, the President shall, through the Department of State, make proclamation of the same, setting forth the time at which the exhibition will open and the place at which it will be held; and he shall communicate to the diplomatic representatives of all nations copies of the same, together with such regulations as may be adopted by the commissioners, for publication in their respective countries."

Approved March 3, 1871. (16 Stats., 470, 471.)

"CHAP. CCLIX.—AN ACT relative to the centennial international exhibition to be held in the city of Philadelphia, State of Pennsylvania, in the year eighteen hundred and seventy-six.

"Whereas Congress did provide by an act entitled 'An act to provide for celebrating the one hundredth anniversary of American Independence, by holding an international exhibition of arts, manufactures, and products of the soil and mine, in the city of Philadelphia, and State of Pennsylvania, in the year eighteen hundred and seventy-six,' approved March third, eighteen hundred and seventy-one, for the appointment of commissioners to promote and control the exhibition of the

national resources and their development, and the nation's progress in arts which benefit mankind, and to suggest and direct appropriate ceremonies by which the people of the United States may commemorate that memorable and decisive event, the declaration of American Independence by the Congress of the United Colonies assembled in the city of Philadelphia on the fourth day of July, anno Domini seventeen hundred and seventy-six; and whereas such provisions should be made for procuring the funds requisite for the purposes aforesaid as will enable all the people of the United States, who have shared the common blessings resulting from national independence, to aid in the preparation and conduct of said international exhibition and memorial celebration under the direction of the commissioners of the United States: Therefore,

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there is hereby created a body corporate, to be known by the name of the Centennial Board of Finance, and by that name to have an incorporate existence until the object for which it is formed shall have been accomplished; and it shall be competent to sue and be sued, plead and be impleaded, defend and be defended, in all courts of law and equity in the United States; and may make and have a corporate seal, and may purchase, take, have, and hold, and may grant, sell, and at pleasure dispose of, all such real and personal estate as may be required in carrying into effect the provisions of an act of Congress entitled 'An act to provide for celebrating the one hundredth anniversary of American Independence by holding an international exhibition of arts and manufactures, and products of the soil and

mine, in the city of Philadelphia and State of Pennsylvania, in the year eighteen hundred and seventy-six, approved March third, eighteen hundred and seventy-one, and all acts supplementary thereto; and said Centennial Board of Finance shall consist of the following-named persons, their associates and successors, from the States and Territories as herein set forth:"

[Here follow the names of the corporators from the several States and Territories.]

* * * * * * *

"SEC. 2. That the said corporation shall have authority and is hereby empowered to secure subscriptions of capital-stock to an amount not exceeding ten million dollars, to be divided into shares of ten dollars each, and to issue to the subscribers of said stock certificates therefor under the corporate seal of said corporation, which certificates shall bear the signature of the president and treasurer, and be transferable under such rules and regulations as may be made for the purpose. And it shall be lawful for any municipal or other corporate body existing by or under the laws of the United States to subscribe and pay for shares of said capital-stock, and all holders of said stock shall become associates in said corporation, and shall be entitled to one vote on each share; and it shall be the duty of the United States Centennial Commission to prescribe rules to enable absent stockholders to vote by proxy. The proceeds of said stock, together with the receipts from all other sources, shall be used by said corporation for the erection of suitable buildings, with their appropriate fixtures and appurtenances, and for all other expenditures required in carrying out the objects of the said act of Congress of March third, eighteen hundred and sev-

enty-one, and which may be incident thereto. And the said corporation shall keep regular minutes of its proceedings, and full accounts, with the vouchers thereof, of all the receipts and expenditures, and the same shall be always open to the inspection of the United States Centennial Commission, or any member thereof.

"SEC. 3. That books of subscription shall be opened by the United States Centennial Commission, under such rules as it may prescribe, and an opportunity shall be given, during a period of one hundred days, to the citizens of each State and Territory, to subscribe for stock to an amount not exceeding its quota, according to its population, after which period of one hundred days stock not taken may be sold to any person or persons or corporation willing to purchase the same.

"SEC. 4. That after the expiration of said period of one hundred days, the United States Centennial Commission shall issue a call for a meeting, by publication in one or more newspapers published at the capital of each State and Territory, not less than thirty days prior thereto, of the corporators and all others who may then have subscribed for stock, to be held in the city of Philadelphia, for the purpose of electing a board of directors, to consist of twenty-five stockholders, whose term of office shall be one year, and until their successors shall have been qualified; at which meeting those who may be present in person or by proxy, of whom one hundred shall constitute a quorum, shall be competent to organize and elect said officers. The said board of directors, and every subsequent board, shall be chosen by the stockholders, out of a list of one hundred stockholders selected and nominated by the United States Centennial Commission. Nine members of the board of directors shall

constitute a quorum for the transaction of business, but no election or change of officers shall take place unless at a meeting of the board of directors, at which a majority shall be present.

"SEC. 5. That the said board of directors shall elect, from its own number, a president and two vice-presidents, whose term of office shall be one year, and until their successors shall have been duly qualified, and shall appoint a treasurer, a secretary, and such other officers as may be required to carry out the purposes of the corporation, which elected and appointed officers shall hold their respective offices during the pleasure of the board, receiving such compensation as the board may prescribe; and the board shall also adopt such by-laws, rules, and regulations for its own government and for the government of its officers as may be deemed expedient: *Provided*, That the same shall not be inconsistent with any act of Congress, or the rules adopted by the United States Centennial Commission.

"SEC. 6. That as soon as the board of directors shall have been duly organized, as provided for in section five of this act, it shall be the duty of the United States Centennial Commission to deliver to the said board all stock-subscription books, with the papers and records of any kind in its possession pertaining to the same.

"SEC. 7. That the grounds for the exhibition shall be prepared and the buildings erected by the said corporation in accordance with plans which shall have been previously adopted by the United States Centennial Commission, and the rules and regulations of said corporation, governing rates for "entrance" and "admission" fees, or otherwise affecting the rights, privileges, or interests of the exhibitors or of the public, shall be

fixed and established by the United States Centennial Commission; and no grant conferring rights or privileges of any description connected with the said grounds or buildings, or relating to said exhibition or celebration, shall be made without the consent of the United States Centennial Commission, and said commission shall have power to control, change, or revoke all such grants, and shall appoint all judges and examiners, and award all premiums.

"SEC. 8. That the Centennial Board of Finance shall have authority to issue bonds, not in excess of its capital stock, and secure the payment of the same, principal and interest, by mortgage upon its property and prospective income.

"SEC. 9. That it shall be the duty of the Secretary of the Treasury of the United States, as soon as practicable after the passage of this act, to cause to be prepared, in accordance with a design approved by the United States Centennial Commission and the Secretary of the Treasury, a sufficient number of certificates of stock to meet the requirements of this act; and any person found guilty of counterfeiting or attempting to counterfeit, or knowingly circulating false certificates of stock, herein authorized, shall be subject to the same pains and penalties as are or may be provided for by law for counterfeiting United States currency; but nothing in this act shall be so construed as to create any liability of the United States, direct or indirect, for any debt or obligation incurred, nor for any claim, by the centennial international exhibition, or the corporation hereby created, for aid or pecuniary assistance from Congress or the Treasury of the United States, in support or liquidation of any debts or obligations created by the corporation

herein authorized: *And provided*, That nothing in this act shall be so construed as to override or interfere with the laws of any State; and all contracts made in any State for the purposes of the centennial international exhibition shall be subject to the laws thereof: *And provided further*, That no member of said Centennial Board of Finance assumes any personal liability for any debt or obligation which may be created or incurred by the corporation authorized by this act.

"SEC. 10. That as soon as practicable after the said exhibition shall have been closed, it shall be the duty of said corporation to convert its property into cash, and, after the payment of all its liabilities, to divide its remaining assets among its stockholders, pro rata, in full satisfaction and discharge of its capital stock. And it shall be the duty of the United States Centennial Commission to supervise the closing up of the affairs of said corporation, to audit its accounts, and submit, in a report to the President of the United States, the financial results of the centennial exhibition.

"SEC. 11. That the commission created by the act referred to in the preamble of this act is hereby made and constituted a body politic and corporate in law, with power to do such acts, and enter into such obligations, as may be promotive of the purposes for which such commission was established. Its title shall be the United State Centennial Commission. It shall have a common and corporate seal, and possess all the rights incident to corporate existence.

"SEC. 12. That the alternate commissioners appointed pursuant to section four of the act approved March third, eighteen hundred and seventy-one, referred to in the preamble to this act, shall have all the powers of a

commissioner when the commissioner is not present at any meeting. When the commissioner is present the alternate may participate in the debates and serve on committees, but shall have no vote. The appointment of all commissioners and alternate commissioners made since March third, eighteen hundred and seventy-two, are hereby ratified and confirmed; and all vacancies now existing, or which may hereafter exist, whether by death, resignation, removal from the State or Territory, or otherwise, shall be filled, at any time hereafter, in like manner as is provided in said act of March third, eighteen hundred and seventy-one, for the appointment of commissioners.

"SEC. 13. That it shall be the duty of the United States Centennial Commission to make report, from time to time, to the President of the United States, of the progress of the work, and in a final report present a full exhibit of the result of the United States' Centennial Celebration and Exhibition of eighteen hundred and seventy-six."

Approved June 1, 1872. (17 Stats., 203, 209–211.)

In conformity with the requirements of the last section of the act of March 3, 1871, the President issued this proclamation July 3, 1873:

"Whereas by the act of Congress approved March 3, 1871, providing for a national celebration of the one hundredth anniversary of the Independence of the United States, by the holding of an international exhibition of arts, manufactures, and products of the soil and mine, in the city of Philadelphia, in the year eighteen hundred and seventy-six, it is provided as follows:

"That whenever the President shall be informed by

the governor of the State of Pennsylvania that provision has been made for the erection of suitable buildings for the purpose, and for the exclusive control by the commission herein provided for of the proposed exhibition, the President shall, through the Department of State, make proclamation of the same, setting forth the time at which the exhibition will open and the place at which it will be held; and he shall communicate to the diplomatic representatives of all nations copies of the same, together with such regulations as may be adopted by the commissioners, for publication in their respective countries;

"And whereas his excellency the governor of the said State of Pennsylvania did, on the 24th day of June, 1873, inform me that provision has been made for the erection of said buildings and for the exclusive control by the commission provided for in the said act of the proposed exhibition;

"And whereas the president of the United States Centennial Commission has officially informed me of the dates fixed for the opening and closing of the said exhibition and the place at which it is to be held:

"Now, therefore, be it known that I, Ulysses S. Grant, President of the United States, in conformity with the provisions of the act of Congress aforesaid, do hereby declare and proclaim that there will be held, at the city of Philadelphia, in the State of Pennsylvania, an international exhibition of arts, manufactures, and products of the soil and mine, to be opened on the 19th day of April, A. D. 1876, and to be closed on the 19th day of October, in the same year.

"And, in the interest of peace, civilization, and domestic and international friendship and intercourse, I com-

mend the celebration and exhibition to the people of the United States, and, in behalf of this Government and people, I cordially commend them to all nations who may be pleased to take part therein.

"In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

"Done at the city of Washington, this third day of July, one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-seventh.

"U. S. GRANT.

"By the President:

[SEAL] "HAMILTON FISH,

"*Secretary of State.*"

Such being the previous legislative and executive action, upon the 16th of February, 1876, this act was passed, one clause of which now called for the construction of this court:

"CHAP. 10.—AN ACT relating to the centennial celebration of American Independence.

"Whereas by the act of Congress entitled 'An act to provide for the celebrating the one hundredth anniversary of American Independence by holding an international exhibition of arts, manufactures, and products of the soil and mine, in the city of Philadelphia, and State of Pennsylvania, in the year eighteen hundred and seventy-six,' approved March third, eighteen hundred and seventy-five, provision was made for the celebration of the centennial anniversary of the Declaration of American Independence by 'an exhibition of American and foreign arts, products, and manufactures,' to be 'held under the auspices of the Government of the United

States in the city of Philadelphia in the year eighteen hundred and seventy-six;' and

"Whereas by the act of Congress entitled 'An act relative to the centennial international exhibition to be held in the city of Philadelphia, State of Pennsylvania, in the year eighteen hundred and seventy-six,' approved June first, eighteen hundred and seventy-two, the centennial board of finance was incorporated, with authority to raise the capital necessary to carry into effect the provisions of the said act of March third, eighteen hundred and seventy-one; and

"Whereas the President of the United States, in compliance with a joint resolution of Congress approved June fifth, eighteen hundred and seventy-four, did 'extend, in the name of the United States, a respectful and cordial invitation to the governments of other nations to be represented and take part in the international exposition to be held at Philadelphia under the auspices of the Government of the United States,' and as the governments so invited, to the number of thirty-eight, have so accepted such invitation, and many of them are making extensive preparations to embrace the courtesy so extended to them, thereby rendering proper arrangements for the coming ceremonies on the part of the Government of the United States a matter of honor and good faith; and

"Whereas the preparations designed by the United States Centennial Commission, and in part executed by the Centennial Board of Finance, are in accordance with the spirit of the acts of Congress relating thereto, and are on a scale creditable to the Government and people of the United States: Therefore,

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

That the sum of one million five hundred thousand dollars, to complete the Centennial buildings and other preparations, be, and the same is hereby, appropriated out of any moneys in the United States Treasury not otherwise appropriated, which shall be paid on the drafts of the president and treasurer of the Centennial Board of Finance, one-third immediately after the passage of this act, and the remainder in four equal monthly payments: *Provided*, That in the distribution of any moneys that may remain in the treasury of the Centennial Board of Finance, after the payment of its debts, as provided for by the tenth section of the act of Congress approved June first, eighteen hundred and seventy-two, incorporating said Centennial Board of Finance, the appropriation hereinbefore made shall be paid in full into the Treasury of the United States before any dividend or percentage of the profits shall be paid to the holders of said stock: *Provided also*, That the Government of the United States shall not, under any circumstances, be liable for any debt or obligation of the United States Centennial Commission or the Centennial Board of Finance, or any payment in addition to the foregoing sum.

"SEC. 2. That the money by this act appropriated shall be paid to the treasurer of the Centennial Board of Finance only after he and the president of the board shall have executed a bond in the sum of five hundred thousand dollars to the United States, with sufficient security, to be approved by the Secretary of the Treasury, for the safe-keeping and faithful disbursement of the sum hereby appropriated."

Approved February 16, 1876. (19 Stats., 3, 4.)

The bill states that, under the foregoing legislation, the complainant corporation was organized; gives the citizenship of the respondents, one of whom, "George Eyster, is the assistant treasurer of the United States at Philadelphia." It refers to these various statutes, quoting the provisions found upon pages 2 and 3, folios 5 and 6 of the Record, "that the said corporation shall have authority, and is hereby empowered, to secure subscriptions of capital stock to an amount not exceeding ten million dollars, to be divided into shares of ten dollars each, and to issue to the subscribers of said stock certificates therefor, under the corporate seal of said corporation, &c. * * * The proceeds of said stock, together with the receipts from all other sources, shall be used by said corporation for the erection of suitable buildings, with their appropriate fixtures and appurtenances, and for all other expenditures required in carrying out the object of said act of Congress of March 3, 1871," &c., and that part of section 10 which provides "that as soon as practicable after the said exhibition shall have been closed, it shall be the duty of said corporation to convert its property into cash, and, *after the payment of all its liabilities*, to divide its *remaining* assets among its stockholders *pro rata*, in full satisfaction and discharge of its capital stock," &c. It then declares that the board of directors was duly organized, &c., and prior to February 16, 1876, had received subscriptions and issued certificates of stock to the amount of about two million dollars. (Record, 3, folio 7.) It then quotes so much of the act of the last-named date as provides that "the sum of $1,500,000 be, and the same is hereby, appropriated," &c., "*Provided*, That in the distribution of any moneys that may remain in the

treasury of the Centennial Board of Finance, after *the payment of its debts, as provided for by the tenth section* of the act" aforesaid, "the appropriation hereinbefore made shall be paid in full into the Treasury of the United States before any dividend or percentage of the profits shall be paid to the holders of said stock: *Provided also*, That the Government of the United States shall not, under any circumstances, be liable for any debt or obligation of the United States Centennial Commission or the Centennial Board of Finance, or any payment in addition to the foregoing sum." The receipt of the amount specified is then acknowledged, the holding of the exhibition stated, and (Record, 4, folio 10) that "the total amount of subscriptions received by the complainant, and for which certificates of stock were issued and are still outstanding, is $2,400,000; and after payment of all necessary and incidental expenses, there remains for distribution in the hands of the complainant the sum of about two million of dollars;" that "no profits have resulted from the said exhibition, and the said sum of $2,000,000 is insufficient even to repay to the stockholders the amounts subscribed by them respectively." Therefore the stockholders "claim and insist that the whole sum of $2,000,000 should, in accordance with the tenth section of the act of June 1, 1872, be 'divided among its stockholders, *pro rata*, in full satisfaction and discharge of its capital stock;'" but that, "at the same time, George Eyster, assistant treasurer, &c., claims and insists that the United States is entitled to receive from the complainant the sum of $1,500,000 before any amount whatever is paid to the stockholders." The complainant finally asks that these adverse claimants may be required to interplead for process, decree, and general relief.

The answers of the respondents, other than Eyster, allege "that, under the true construction of the act of February 16, 1876, the funds in the hands of the complainant for distribution should be first applied in payment of the capital stock, and that any surplus thereafter, (in other words, the profits,) if any, resulting from the Centennial Exhibition," should be paid to the United States to the extent of $1,500,000, and the balance of profits, if any, be divided *pro rata* among the stockholders. "But as no profits have resulted, * * and as the balance in the hands of the complainant is wholly inadequate even to repay the amount of stock subscribed," they "aver that the United States is not entitled to participate at all in the distribution of the said fund, but that the same should and ought to be divided among the stockholders, *pro rata*, in satisfaction and discharge of the capital stock, in accordance with the tenth section of the act of 1872," &c. (Record, 8, 13, 16.)

Eyster, on the contrary, "is advised and believes that, under the true construction of the act of February 16, 1876, the funds in the hands of the complainant for distribution should first be applied in payment in full into the Treasury of the United States of the sum of $1,500,000, before any distribution whatever is made among the stockholders, and that, after the payment of the said sum to the United States, any assets remaining should be divided *pro rata* among the stockholders; that after paying all debts and liabilities of said corporation, the surplus remaining in the hands of said Centennial Board of Finance is *profits*, according to the true intent and meaning of the several acts of Congress referred to in said bill; and he avers that the said stockholders are not entitled to participate at all in the dis-

tribution of said funds until the said sum of $1,500,000 shall first have been paid into the Treasury of the United States." (Record, 10.)

The conflicting statements of the position of the respective parties thus given in their several answers define the issue to be determined.

ASSIGNMENT OF ERRORS.

The original defendant, George Eyster, appellant, assigns for error the decree of the circuit court in this cause, "that the complainants do pay and distribute the fund in their hands to and among the several and respective stockholders of the complainant, *pro rata*, according to the true intent and meaning of the act of Congress approved the 16th day of February, 1876." (Record, 23, folio 61.)

And the said Eyster shows further for error that the decree above recited is not according to, but in contravention of, said act of Congress, the true meaning and intent of which was and is that the United States should be re-imbursed in full the $1,500,000 appropriated by said act before any dividend of funds should be made among the stockholders of the complainant corporation.

BRIEF.

Waiving all jurisdictional and other preliminary and subsidiary questions, it is proposed in this brief only to discuss upon its merits the main issue, whether or not the United States is entitled to be re-imbursed the $1,500,000 advanced under the act of February 16, 1876, before the stockholders are to be repaid any portion of the sums by them paid for stock of the corporation complainant.

The tenth section of the act of June 1, 1872, required the conversion of the corporate property into cash as soon as practicable after the close of the exhibition, and "after the payment of *all* its liabilities" that the residue should be divided among the stockholders in full of their claims as such. This provision is according to the general principle of law that the capital stock of a corporation is a trust-fund, primarily for the payment of debts, the interests and rights of stockholders being secondary to the claims of creditors, who can follow it in equity so far as it can be traced, in case there has been an attempt to divert it to other purposes by a division among the corporators or otherwise. (Sanger *v.* Upton, 91 U. S., 60, 61; Wood *v.* Dummer, 3 Mason, 308, 311, 321; Baker *v.* Atlas Bank, 9 Metc., 192.)

Subsequent legislation must be construed, if possible, harmoniously with the original act of incorporation, as all these provisions relate to the same subject-matter; and that construction, if there be room for choice, should be adopted which is most consistent with the ordinary rules of law and equity. (Sedgw. on Stat. and Const. Law, second ed., ch. vi, pp. 209–211, and cases there cited.)

The general subject-matter is the holding of a centennial exhibition. In all the acts, from first to last, it was proposed to accomplish this through the machinery of a private corporation. The Government might have assumed the whole thing, furnished the means, directed the method of expenditure, and have received the profits or pocketed the loss resulting therefrom. But Congress steadily declined to do this, the seventh section of the act of March 3, 1871, c. 105, (16 Stats., 471,) stipulating that "the United States shall not be liable for any ex-

penses attending said exhibition, or by reason of the same." It gave recognition to, but refused participation in, the enterprise. The act of June 1, 1872, c. 259, (17 Stats., 202,) declares itself, in its preamble, to be for the purpose that "provisions should be made for procuring the funds requisite for the purposes aforesaid," and, "*therefore*," it enacts the present complainant into existence, with the customary corporate powers, and capacity to take and hold the necessary real and personal estate, which was to be purchased, as it always is in such cases, with the funds subscribed to and constituting the capital stock. The books of subscription were opened and the corporation organized in ordinary form. It was authorized to charge entrance or admission fees, subject only to the supervision of the commission, that they might be reasonable. As the original capital was not expected to be sufficient for all the expenditures of the exhibition, the directors were, by section 8, authorized to issue bonds to an equal amount and to secure them by mortgage upon its property and *prospective income*. The next section (9) declares that "nothing in this act shall be so construed as to create any liability of the United States, direct or indirect, for any debt or obligation incurred, *nor for any claim by* the Centennial International Exhibition, or *the corporation hereby created, for aid or pecuniary assistance from Congress or the Treasury of the United States in support or liquidation of any debts or obligations created by the corporation herein authorized*," (17 Stats., 210.) The purpose that the corporators shall assume the prospective profit or loss is thus reiterated. If Congress ever intended that any deficiency arising from excess of expenses above receipts should be made up out of the Federal Treasury, that in-

tention was conceived at some later date. Those who find it in the act of February 16, 1876, must satisfy the court that there was a change of legislative intent; while we ask only such a reading of this last statute as shall harmonize it with preceding legislation. It is to be noticed that the language above quoted does not say that no loan or advance of funds will be granted, but no pecuniary assistance "in support or liquidation of any debts," &c. That is, no aid or means shall be furnished to have the United States pay the corporate debts.

The charter shows that loans were to be resorted to and mortgage security given, and the prospective income of the corporation also pledged to secure the repayment of these loans. These resources were all found insufficient. Then recourse was had to the United States for an advance of funds necessary to complete the preparations for putting the concern into a position where it could begin to receive an income, from which to liquidate its debts, including such advance, and return profits to the original subscribers. No *gift* was asked for, either absolute or conditional. The requirement of repayment in full negatives any such idea. If without the proviso the appropriation would have been a gift, and the expectation of the parties was for it to have that effect, the proviso was worse than superfluous, for it seems by its language to exclude the idea of donation. If it was not a gift it was a loan, the repayment of which was contingent upon the receipt of funds for that purpose. It was a liability of the corporation, not a subscription to its stock. The United States became a creditor to this extent. If the receipts proved insufficient to pay all the corporate debts, the claim of the United States would, under the general statute of

March 3, 1797, chapter 20, section 5, (1 Stats., 512,) have a preference over all others, and to be paid in full. (United States *v.* Fisher, 2 Cranch, 385; Harrison *v.* Steny, 5 Cranch, 298, 299; Hunter *v.* United States, 5 Peters, 181; United States *v.* State Bank, 6 Peters, 29; Lewis *v.* United States, 92 United States, 618.)

A fortiori, then, it would have an equity superior to that of the stockholders to re-imbursement. All the property and "prospective income," however, Congress had authorized, by the previous statute, to be pledged to raise funds. It was considered just, therefore, that those who had already made loans upon the faith of this enactment and of these means of payment, whether under any mortgage or specific lien or not, should not be deprived of their security by the United States unexpectedly coming in as a preferred creditor. Accordingly, the proviso was put into the act of February 16, 1876, postponing the Government to the other creditors, instead of preserving its usual priority. That is all the intent and meaning of this proviso, and its language can properly be construed consistently therewith. First, all the debts are to be paid "as provided for in the tenth section of the act of Congress approved June 1, 1872;" then, "the appropriation hereinbefore made shall be paid in full into the Treasury of the United States before any dividend or percentage of the profits shall be paid to the holders of said stock." A comma after the word "dividend" would indicate grammatically the meaning of this proviso: "before any dividend, or percentage of the profits, shall be paid," &c.; *i. e.*, before any division of the principal is made or any per centum paid thereon as profits.

If the law disregards punctuation, as it properly does,

because it is usually the work of the printer or proof-reader, and not of the legislator, it will as little heed the omission as the insertion of a comma, but if two renditions of the same sentence are possible, will adopt that most consistent with legislative intent as found in former enactments upon the same subject, the context, and other proper sources of information.

The claim to postpone the Government to stockholders as well as to general creditors is only claimed to be inferential from the language employed; if expressly asserted, there would be no room for controversy. But the omission of any such express declaration is of itself a strong argument that no such intention existed. If after the word "debts" the words "and the amount of the subscriptions to the capital stock" had been added, no doubt could have arisen. Had the legislators intended that both the debts and capital stock should be paid off before the appropriation was refunded, some such language as is above indicated would have been used. Debts are expressly mentioned; the capital is not. *Expressio unius, exclusio alterius.* But the prohibition upon the complainant, forbidding the distribution of any profits among the stockholders until the United States were repaid, is by no means a concession of the right to divide the capital stock itself without paying this loan. Corporations frequently do declare dividends of alleged profits without first making proper provision for creditors, oftentimes with a sincere expectation that future receipts from an increasing business will amply provide for the debts. To prevent any such discounting of a prospective income this proviso is sufficient, even if it leaves the final distribution of the assets, upon the dissolution of the corporation, to general principles of law and equity.

To give to the language under discussion the effect claimed by our co-respondents, it must be construed as *affirmatively* asserting a right to divide the capital stock without regard to this claim of the Government, whereas it is at most but a negative proposition. As just observed, if confined to a negation of a power to divide supposed profits, it merely leaves the *source* of profits—*i. e.*, the subscribed capital—to be disposed of in the ordinary way. Saying that *profits* shall *not* be divided until a certain sum is first paid, is by no means a declaration that the capital itself may be divided without any such payment. If any person, natural, corporate, or body-politic, should make a loan to a railroad company whose charter expressly declared that the earnings of the road should be pledged to liquidate the loan, and no part of them should be divided as profits until the loan was canceled, this would not be thought to imply any power to dissolve the corporation itself, and divide its assets and capital stock without making provision for the loan.

Unless the word dividend is referred to a division of the principal, then its use is tautological and of no effect, whereas in construing statutes every word is supposed to have some, its natural and legitimate, meaning and effect. But if dividend is here used synonymously with the following words, "percentage of the profits," it by no means follows (as before remarked) that silence as to the capital stock implies a right to divide it, contrary to the ordinary principles of law and equity.

It is the use of these words, "percentage of profits," that permits of any argument. Without them, the meaning to prohibit any division, either of capital or profits,

would be too plain for discussion. Being found in the statutes, they are to be construed with reference to the context, to other parts of this act, and to precedent legislation upon this subject. (1 Bla. Com., *60; 19 Vin. Ab., 519, § 90; Strode *v.* The Hafford Justices, 1 Brock., 165.)

In one sense, the "remaining assets" spoken of in the tenth section of the act of June 1, 1872, may be deemed "profits," no percentage of which is to be divided until the Government is repaid. These assets were derived mainly from the entrance or admission fees, almost the only contemplated source of profits. The comparatively small sum obtained by the sale of buildings, &c., might be said to be a realization or replacement of the capital; but this was entirely inadequate to the payment of liabilities; the reliance for this purpose, as well as for anticipated profits, was the daily receipts above current expenses—and thus is created the fund now in controversy.

Although legislative debates cannot be resorted to for the purpose of controlling unambiguous words or phrases in a statute, or to give them a strained meaning in opposition to their common use, yet where they are susceptible, in ordinary parlance and usage, of two meanings, the manner in which the journals of the legislature show the language to have been modified and adopted, and even the sentiments of those proposing, advocating, or objecting to and opposing the amendments, may be considered. Even in discussing constitutional questions nothing is more common than to cite what was said upon the one side or the other of them in the convention framing the Constitution. It is like the ordinary case of ambiguity; recourse cannot be had to extrinsic mat-

ter, unless necessary to remove an obvious doubt arising from the terms employed.

This act of February 16, 1876, originated in the House of Representatives, this proviso then being in this form: "*Provided*, That in the distribution of any moneys that may remain in the treasury of the Centennial Board of Finance after the payment of its debts, as provided for by the tenth section of the act of Congress, approved June 1, 1872, incorporating said Centennial Board of Finance, the appropriation hereinbefore made shall share equally with the holders of the said centennial stock, and a like percentage thereon be paid into the United States Treasury as may be paid to the holders of the said stock." (Cong. Record, 44th Cong., 1st session, vol. 1, part 1, page 448.)

After protracted debate upon the bill, Mr. Springer moved to amend by striking out the last three lines of the proviso, commencing at the words "shall share equally," and to substitute the phraseology which now requires your consideration, the proviso as thus amended having been enacted.

In support of the amendment its mover said: "The object of this amendment is to provide that *if there should be a dividend when this exhibition is over, the United States shall come in as a preferred creditor*, [*i. e.*, preferred to stockholders,] instead of sharing equally, as this bill now provides, with the stockholders of this corporation. In other words, the United States having made a voluntary contribution, as this bill provides, we shall be first entitled to have the people's money back before any of it goes into the pockets of private individuals as a dividend." (Cong. Record, 44th Cong., 1st session, vol. 4, part 1, page 631.)

The amendment was made to obviate an objection to the original bill, (forcibly presented by Mr. Savage—see same volume of Cong. Record, page 564,) that if the exhibition was a success, and a fund remained for distribution at its close, the Government, for the $1,500,000 it had advanced, "*as a loan*," would receive but a *pro rata* part with the stockholders. In the debate in the Senate Mr. Edmunds attributed to the word "dividend" in this proviso the meaning of a division of the capital stock; and with this understanding the bill passed that body.

Appended to this brief is a reference to the pages of the Congressional Record upon which can be found the debates to which this whole legislation has given rise.

Citations of the familiar principles of construction of statute law and of the cases which illustrate them have not been here made, because it is conceived that there is no doubt what they are, but the only inquiry is as to the application of them to the terms of this proviso.

EDWIN B. SMITH,
Assistant Attorney-General.

APPENDIX.

Abstract of proceedings and debates of the Forty-first Congress concerning the act of February 16, 1876, as appearing in the Congressional Record, Volume IV, Parts I and II.

IN THE HOUSE OF REPRESENTATIVES.

Page 191—December 10, 1875.—So much of the message of the President as relates to the proposed centennial celebration, referred to a select committee of thirteen members.

Page 214—December 14.—Memorial of the United States Centennial Commission and of the Centennial Board of Finance, asking for an appropriation of $1,500,000.

Page 251—December 20.—Special committee appointed.

Page 291—January 6, 1876.—The bill (H. R. No. 514) reported by special committee, read first and second times, ordered to be printed, and referred to the Committee of the Whole on the State of the Union.

Page 478—January 18.—Debate in Committee of the Whole on the consideration of the bill.

Page 500—January 19.—Debate continued.

Page 553—January 22.—Debate continued.

Page 620—January 25.—Debate continued.

Page 631—January 25.—Mr. Springer's amendment.

Page 635—Same day.—Bill as amended engrossed, read third time, and passed.

IN THE SENATE.

Page 639—January 26, 1876.—Message from the House requesting the concurrence of the Senate in the bill.

Page 652—Same day.—Bill read twice by its title and referred to the Committee on Appropriations.

Page 959—February 9.—Debate, as in Committee of the Whole, on consideration of the bill.

Page 996—February 10.—Debate continued.

Page 1024—February 11.—Debate continued.

Page 1037—Same day.—Bill read third time and passed.

IN THE HOUSE.

Page 1055—February 11, 1876.—Message from the Senate to the House that it had passed the bill without amendment.

Page 1148—February 17.—Message from the President to the House that he had signed the bill.

Page 1211—February 21.—Mr. Springer rises to a question of privilege.

Page 1235—February 23.—Mr. Harrison rises to a question of privilege.

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In the Supreme Court of the United States.

GEORGE EYSTER, ASSISTANT TREASURER OF THE UNITED STATES AT PHILADELPHIA, APPELLANT,
vs.
THE CENTENNIAL BOARD OF FINANCE ET AL.
No. 988.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Brief and Argument of William M. Springer, of Counsel for Appellant.

In the Supreme Court of the United States.

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF AND ARGUMENT OF WILLIAM M. SPRINGER, OF COUNSEL FOR APPELLANT.

THE FACTS.

Congress, by an act approved February 16, 1876, "relating to the Centennial Celebration of American Independence," appropriated $1,500,000 to complete the centennial buildings, to be paid to the Centennial Board of Finance, with this proviso: "That in the distribution of any moneys that may remain in the treasury of the Centennial Board of Finance after the payment of its debts, as provided for by the tenth section of the act of Congress approved June 1, 1872, incorporating said Centennial Board of Finance, the appropriation hereinbefore

made shall be paid in full into the Treasury of the United States before any dividend or percentage of the profits shall be paid to the holders of said stock."

Section 10 of the act of 1872, referred to in the proviso, is as follows:

"That as soon as practicable after the said exhibition shall have been closed, it shall be the duty of said corporation to convert its property into cash, and, after the payment of all its liabilities, to divide its remaining assets among its stockholders *pro rata*, in full satisfaction and discharge of its capital stock," &c.

After the close of the Centennial Exhibition, the property of the corporation was converted into cash, its current liabilities all discharged, and there remained about $2,000,000 to be disposed of according to the foregoing provisions of law.

Appellant claims for the United States $1,500,000 of this money, under the provision contained in the act of February 16, 1876.

Appellees claim for the stockholders of the corporation the whole amount of the $2,000,000, to be distributed *pro rata* among them, in satisfaction of the $2,400,000 of the capital stock subscribed and outstanding.

This court is asked to give the proper interpretation to the statutory provisions on the subject, and to direct the manner in which the distribution of the fund should be made.

The court below held that the stockholders were entitled to the fund, and that the Government of the United States was not entitled to any portion thereof, and decreed accordingly.

Appellant has appealed from the decree of the court below in this cause, and the appeal has been allowed.

THE QUESTION

for this court to determine is this: Is the Government of the United States entitled to have paid into its Treasury the $1,500,000 appropriated by the act of February 16, 1876?

The right of the Government to priority over the stockholders is clear, for the following reasons:

1. The Constitution of the United States authorizes Congress to provide for priority of payment to the Government in all cases where public funds pass into the hands of persons or corporations. (Fisher *vs.* Blight, 2 Cranch, 358.) And Congress has by various acts provided for such priority, and the courts have given effect to the legislative intent in such cases. The Revised Statutes of 1874 have condensed all previous statutes on this subject into one section. (Rev. Stats., sec. 3466, and cases there cited.) Such preference is in accordance with the uniform practice of governments, and if it be contended that Congress did not intend, in the passage of the centennial act, to secure priority of payment to the Government, such legislation being a departure from the general system of the laws, the legislative intention must be expressed with irresistible clearness to induce a court of justice to suppose a design to effect such an object. (Fisher *vs.* Blight, 2 Cranch, 390.)

Counsel for appellees do not contend for such irresistible clearness, but seem to rely upon some doubtful import in the language of the statute. But if there should be a doubt as to the proper construction of the statute, the Government, we insist, is entitled to the benefit of the doubt, for the money was appropriated without consideration, in a case where no obligation rested upon the

United States, and for a purpose foreign to the objects of Government.

2. Congress had no power under the Constitution to make this appropriation.

Chief-Justice Marshall, in a case decided by this court, and in an opinion which has ever since been regarded by all the courts of this country as of the highest authority, said:

"This Government is acknowledged by all to be one of enumerated powers. The principle that it can exercise only the powers granted to it, would seem too apparent to have required to be enforced by all those arguments which its enlightened friends, while it was depending before the people, found it necessary to urge; that principle is now universally admitted." (McCullough *vs.* Maryland, 4 Wheat., 405.)

We admit all that was contended for by Chief-Justice Marshall, namely, that the Constitution allows Congress that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. "But should Congress," says the same high authority, "under the pretext of executing its powers, pass laws for the accomplishment of objects not intrusted to the Government, it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land."

Judge Cooley, in his work on Constitutional Limitations, (page 173,) says:

"The Government of the United States is one of *enumerated* powers; the governments of the States are possessed of all the general powers of legislation. When

a law of Congress is assailed as void, we look in the National Constitution to see if the grant of specified powers is broad enough to embrace it; but when a State law is attacked on the same ground it is presumably valid in any case, and this presumption is a conclusive one, unless in the Constitution of the United States or of the State we are able to discover that it is prohibited. We look in the Constitution of the United States for *grants* of legislative power, but in the constitution of the State to ascertain if any *limitations* have been imposed upon the complete power with which the legislative department of the State was vested in its creation. Congress can pass no law but such as the Constitution authorizes, either expressly or by clear implication."

Mr. Justice Strong, in delivering the opinion of this court in the Legal-Tender cases, (12 Wallace, 531,) said:

"Nor can it be questioned that when investigating the nature and extent of the powers conferred by the Constitution upon Congress, it is indispensable to keep in view the objects for which those powers were granted. This is a universal rule of construction, applied alike to statutes, wills, contracts, and constitutions."

In this opinion reference was made to the decision of this court in the case of McCullough *vs.* The State of Maryland, and Chief-Justice Marshall's views as to the constitutional limitations of the legislative power of Congress were quoted and approved. Mr. Justice Strong in this opinion gave to the legislative power of Congress the most liberal construction ever adopted by this court; and it is believed that future decisions of this court will rather modify than enlarge the scope of legislative authority recognized by the decision in the Legal-Tender cases. But the opinion in

the Legal-Tender cases does not sufficiently enlarge the legislative power of Congress to warrant the appropriation to the Centennial Exhibition. This appropriation and the objects for which it was made are neither specified in the words of the Constitution nor clearly and directly traceable to any one of the specified powers. Nor can the existence of a power to make this appropriation be fairly deduced from more than one of the substantive powers expressly defined, or from them all combined. It is not possible to group together any number of these powers and infer from them all that the power claimed has been conferred.

Let us examine the enumerated powers of Congress and determine whether there be any power or group of powers from which the power claimed can be inferred.

Its constitutionality cannot be derived from the first clause of section 8 of article 1: "To lay and collect taxes, * * * to pay the debts, and provide for the common defense and general welfare of the United States." For Congress cannot engage in such undertakings as may promote the general welfare, unless they fall within the scope of the powers enumerated in the Constitution. (2 Story on Const., sects. 1274–1276.)

This proposition is too well settled to admit of doubt. This court, in the Legal-Tender cases, would have encountered no difficulty whatever if the "general welfare" construction could have been invoked. Congress being the sole judge of the means, if the "general welfare" is the end, then we have a government of unlimited powers. (Martin *vs.* Hunter, 1 Wheat., 304; Gibbons *vs.* Ogden, 9 Wheat., 1.)

The Centennial Exhibition had for its object the promotion of science and the useful arts, as well as the cel-

ebration of the one hundredth anniversary of American independence. But the only power given Congress by the Constitution for the promotion of such objects is the clause following:

"To promote the progress of science and the useful arts by securing, for limited times, to authors and inventors the exclusive right to their writings and discoveries."

Congress has already executed this power by the passage of suitable patent and copyright laws.

In the convention which formed the Constitution of the United States the following propositions were submitted to the consideration of the convention, viz:

"That Congress should have power—

"To establish a university.

"To encourage, by proper premiums and provisions, the advancement of useful knowledge and discoveries.

"To establish seminaries for the promotion of literature and the arts and sciences.

"To grant patents for useful inventions.

"To secure to authors exclusive rights for a certain time.

"To establish public institutions, rewards, and immunities for the promotion of agriculture, commerce, trades, and manufactures." (Journal Convention, pages 260–261.)

These various propositions were referred to a committee, and the only subject embraced in them which was adopted by the convention is contained in the clause above referred to, viz, "To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

The other subjects embraced in the foregoing propositions having been considered by the convention, and the convention having failed to incorporate them in the Constitution, except in the single clause specified, we have the right to infer that the clause actually adopted embraces all the power that the Constitution confers in the premises upon Congress. (Marbury *vs.* Madison, 1 Cranch, 174.) If the foregoing clauses had been adopted by the convention and incorporated in the Constitution, the centennial appropriation would have a clear constitutional authority. But their rejection, and the absence of any similar provisions in the Constitution, except as stated, leave the appropriation without constitutional warrant.

During the pendency of the various centennial bills in Congress their unconstitutionality was referred to and discussed. Discussing one of these bills Senator Thurman said: (Congressional Record, vol. 3, pages 1953–1954.)

"Now, in the first place, with respect to the constitutional power, what Senator on this floor has pointed to one line or one letter of the Constitution that authorizes any such appropriation? My distinguished friend from Pennsylvania, who sits next to me, [Mr. Scott,] than whom there is no man in the Senate better qualified to answer such a proposition if it could be successfully answered, when appealed to to point to that provision of the Constitution which authorizes Congress to give money for any such purpose, was compelled to answer simply by saying the thing had been done before, or things equally without warrant. No man has ventured to point to any such provision, and I imagine that the only provision which can be pointed to is the very well

known clause in regard to the power of Congress to levy taxes. I need not say to every lawyer in the Senate that the words 'to pay the debts and provide for the common defense and general welfare of the United States' are not now construed by any lawyer anywhere to be a distinct and substantive grant of power. It is very true that the senator from Texas [Mr. Flanagan] the other day treated it as a substantive and independent grant of power, and thought that the Constitution gives us power to provide for the general welfare of the United States just precisely as we see fit to provide for it. I need not say to those who are somewhat more familiar with this subject that that interpretation of the Constitution would wipe out all the rest of it, and every limitation of power whatsoever that is contained in it; and that it would be useless to talk of a strict construction or a latitudinarian construction, if there were in the Constitution a distinct, substantive, independent grant of power to the Congress of the United States to do whatever in its discretion would promote the general welfare of the United States. No, sir; the history of that clause and its meaning is well understood—not that it is not capable of different interpretations. The interpretation that has obtained more generally than any other is that suggested first, I believe, by Mr. Madison, and adopted by Judge Story in his commentaries, to insert after the word 'excises' the words 'in order,' so that the clause should be read as if it were thus: 'to lay and collect taxes, duties, imposts, and excises, in order to pay the debts and provide for the common defense and general welfare of the United States.' That is the interpretation which perhaps has the greatest weight of opinion in its support.

"An interpretation, I know, has been contended for that is almost as bad as that other interpretation contended for by the Senator from Texas the other day, which makes the clause 'to provide for the general welfare' a distinct, substantive, and independent grant of power, for it is said that you may levy taxes, duties, imposts, and excises in order to pay the debts and provide for the general welfare of the United States—that is, that your power to raise taxes is only limited by the general welfare, and that for any purpose that Congress in its discretion deems to be promotive of the general welfare, Congress may levy taxes; and if it may levy taxes for such purposes, of course it can expend them for such purposes. That is the argument. Therefore, no matter what it is, if Congress shall suppose that it is 'for the general welfare of the United States' to set up a particular government in the Sandwich Islands, or to establish schools in China or Japan to educate those people because they have intercourse with us, if Congress should deem that that would be for 'the general welfare of the United States,' it could levy taxes for that object, and having levied them, it could expend them for that purpose. That is the argument upon which many an appropriation that, in my judgment, is entirely violative of the spirit, if not the very text, of the Constitution has been supported, and upon which alone, so far as I can see, must this appropriation be supported, if it can be supported at all. But, sir, is it true that Congress has a right to levy taxes for any purpose whatsoever that in its discretion it may consider may be promotive of the public welfare? I deny the proposition. Congress has a right to promote the general welfare, as it has a right to provide for the common defense; but here is the

rule, a rule that ought to be as inflexible as the laws of the Medes and Persians, that you can only provide for the general welfare by exercising the powers that are delegated to you in the Constitution. That is the mode in which you are to provide for the general welfare; not by going outside of the express delegations of power and roaming through all the universe of things to find something that, in your judgment, would be promotive of the general welfare. You can promote the general welfare by the exercise of the powers expressly conferred upon you, and such as necessarily result by implication from those express grants; but you cannot go outside of that and treat these words 'to promote the general welfare' as a substantive, distinct grant of power. You can do that no more under the guise of the taxing power than you could do it if that clause was wholly distinct from the clause of taxation."

Mr. Tucker, of Virginia, in his argument on the centennial bill in the House of Representatives, (Cong. Record, vol. 13, page 510,) said:

"In reference to the power to pass this bill, there is one phrase which is greatly relied upon; and if I can show that it fails to give constitutionality to this bill, then I think I will have cleared up all difficulties. Gentlemen have said that there is power given to Congress 'to provide for the common defense and general welfare.' I deny it *in toto*. I say there is *no grant of power* to provide for the common defense and general welfare. The language of the Constitution in connection with that phrase, its origin and adoption into the Constitution, and the debates in the Federal Convention, show conclusively that they indicate the object of the previously-delegated tax-power, and are in themselves a substantive

grant of power. This has been shown by my able friend from Pennsylvania, [Mr. Cochrane.] He showed that Judge Story had interpreted the clause as if the words 'in order' were inserted before the words 'to pay debts,' &c.; so that the clause would read: 'Congress shall have power to lay and collect taxes, duties, imposts, and excises (in order) to pay the debts and provide for the common defense and general welfare, but all duties, imposts, and excises shall be uniform throughout the United States.' That this is the true interpretation will appear from the grammatical construction of the sentence. It consists of three branches; the first as to laying and collecting, and the second as to paying debts and providing for common defense and general welfare, and the third a qualification on the power in the first branch of the sentence. To suppose the learned men of the convention would have interpreted as a substantive *power* the words in the second branch of the sentence, and then in the third branch qualified the first branch, would be to attribute to them a lamentable lack of knowledge of grammar and of style. Hence the usual and generally-conceded construction of the second clause has been that it is attached to the first clause as a definition of the objects of the tax-power, limiting its use only to such objects, and that the second clause cannot be fairly held to contain a new and substantive grant of power.

* * * * * * *

"The question arises, Where is the express grant of power to appropriate for this Centennial? Gentlemen admit there is no express grant of power. Then where in this appropriation for the Centennial is there to be found the essential element of its being a necessary incident

to any express grant of power? What granted power needs to be carried out by the passage of this bill? There is no need for it in order to carry out any granted power, and none has been or can be shown. Then the bill must be rejected or the oath we have taken violated.

* * * * * * *

"When Mr. Clay, I think, was discussing the bank bill in 1811, he is reported to have said that whenever any one was in want of some clause of the Constitution on which a doubtful bill might light and rest, he referred it to the power to regulate commerce with foreign nations and among the States. Now, nobody has claimed that this centennial bill regulates commerce with foreign nations or among the States that I have heard. The truth is, I may say in passing, that of all the powers granted by the Constitution, that power alone was granted by the convention which adopted it *nemine contradicente*, so clear were the framers of the Constitution that *that* power, in the sense in which they granted it, did not involve any danger to the reserved powers of the States."

In the further discussion of the centennial appropriation bill in the House, Mr. Lawrence, of Ohio, maintained its constitutionality, deducing the authority from the power to regulate commerce and from that to borrow money. General Banks derived the authority from the treaty-making power, and others rested upon the general-welfare provision. But we think these deductions of power too remote, and partake more of the nature of legal sophistries than of judicial interpretations of the fundamental law. If by promoting an exhibition of our resources we may so favorably advertise our national wealth as to enable us to borrow money at a low

rate of interest, and so invite an exchange of the products of other countries as to regulate commerce thereby, and so exhibit our political and commercial power as to induce other nations to enter into treaties with us, does it follow that an international exhibition is one of the objects clearly deducible from the enumerated powers of Congress? If that be the proper construction of the Constitution, then there can be no limits placed upon the power of Congress to make appropriations of money for any purpose whatever, or to pass any law on any subject whatever. There is nothing in the wide range of legislative subjects that cannot be justified under some of the enumerated powers of the Constitution, if it be allowable to triturate the powers into infinitesimal particles, and to seize upon the individual atoms instead of resting upon the well-defined constitutional structure. The difference between authority directly and fairly deducible from the enumerated powers, and assumption resting upon remote, consequential, and illogical deductions, is the difference between a written constitution of enumerated powers and an unwritten constitution of unlimited powers.

We ask the court to give a construction to the Constitution in the interest of economy in public expenditures. It would be of incalculable benefit to the country if a decision of this court could be made clearly defining the powers of Congress in reference to appropriations of the public revenue. The tendency of legislation is to favor everything that may appear good in itself, without reference to constitutional restrictions. But it is the duty of the courts to apply the dispassionate judgment of the jurist to every question that may come before them.

If the court should be of opinion that the act of Congress making this appropriation was passed without constitutional warrant, then, without regard to the terms of the act, the money must be returned to the Treasury of the United States. Upon this point Judge Cooley (Constitutional Limitations, page 188) says:

"When a statute is adjudged to be unconstitutional it is as if it had never been. Rights cannot be built up under it; contracts which depend upon it for their consideration are void; it constitutes a protection to no one who has acted under, and no one can be punished for having refused obedience to it before the decision was made."

3. The legislation of Congress in reference to the Centennial Exhibition evinces a fixed purpose on the part of Congress not to incur any liability therefor; and the act of February 16, 1876, making the appropriation in question, was so worded as to require the return of the money to the Government before any dividend whatever should be paid to the stockholders.

LEGISLATION PRIOR TO THE ACT OF FEBRUARY 16, 1876.—The acts of March 3, 1871, June 1, 1872, and February 16, 1876, are printed in full in the brief of Mr. Smith, the Assistant Attorney-General.

Section 7 of the act of March 3, 1871, provides that "the United States shall not be liable for any expenses attending such exhibition or by reason of the same."

As the bill was originally introduced this provision was not in it. The promoters of the measure distinctly avowed their purpose not to ask an appropriation from Congress. Mr. Morrell, one of the Representatives from the State of Pennsylvania, introduced the bill in the House, and pending the debate upon it said:

"If it were not necessary, in order to give to the celebration and exhibition an international as well as national character, that Congress should sanction and inaugurate the project, the local authorities of Pennsylvania and Philadelphia would assume their sole direction. If Congress shall decide to take such action as is contemplated in the proposed legislation, I am authorized to say that Philadelphia and Pennsylvania will give the use of Fairmount Park, erect buildings, and make all the necessary arrangements for the exhibition free from expense to the Government." (Cong. Globe, 3d sess. 41st Cong., page 105.)

Mr. Myers, also one of the Representatives from Pennsylvania, pending the discussion upon the bill, said:

"It is stipulated that these commissioners shall receive no compensation for their services; the Government is only to pay their actual expenses; all we ask is that the sanction and superintending aid of the Government shall be lent to a celebration the fitness of which no one will deny, an international exhibition which shall be regarded in the future as a great national event, and which would fail to mark the historic period it is designed to recall if placed in any other spot than where liberty was first proclaimed throughout the land, and unto all the inhabitants thereof." (Cong. Globe, 3d sess. 41st Cong., page 108.)

Mr. Allison, of Iowa, said:

"There is another feature to which I desire to call attention. The gentleman from Pennsylvania [Mr. Myers] says that it is proposed that Philadelphia and Pennsylvania shall pay the expenses of this exhibition. Now if that be true, I trust it will be so distinctly declared in this bill.

"Mr. BINGHAM, of Ohio. It is.

"Mr. ALLISON. I have examined the bill with some care, and I can find nothing of the kind in it. If we are to incur liability under the bill, let us know in advance what that liability is; but I can find nothing in this bill which limits the liability of the United States, except that no compensation shall be paid to the commissioner.

"Mr. BINGHAM. The gentleman will observe that the eighth section provides that whenever the President shall be informed by the governor of the State of Pennsylvania that provision has been made for the erection of suitable buildings for the purpose, and for the exclusive control by the commission herein provided for, of the proposed exhibition, he shall take the action contemplated.

"Mr. ALLISON. But the gentleman from Ohio will observe that the State of Pennsylvania and the city authorities of Philadelphia are required to provide only a place for the meeting of this commission.

"Mr. WELKER. Will the gentleman from Pennsylvania allow us to put in a proviso that the expenses incurred under this act shall be borne by the State of Pennsylvania?

"Mr. MORRELL. I have no objection to that.

"Mr. BINGHAM. But you do not want the State of Pennsylvania to pay the expenses of the United States commissioner."

Mr. O'Neill, of Pennsylvania, during the debate, said:

"I say again that I cannot see why there should be any difficulty in the House adopting the location indicated by the bill for the great national exhibition on the 4th day of July, 1876. The question of cost is not

to be considered. If that question should be deemed an essential point, the citizens of Philadelphia would themselves pay the expenses attendant upon the celebration, just as any other great city in this country probably would do." (Cong. Globe, 3d sess. 41st Cong., page 304.)

The following extracts from the proceedings of the House pending the consideration of this bill are important, as showing that the House refused an appropriation amounting to five hundred thousand dollars, "for all purposes whatever," on account of said exhibition.

"The question next recurred on the following, moved as a substitute by Mr. Morrell, of Pennsylvania, for the amendment of Mr. Sargent: 'Add, after the word "commission," in the ninth line of the seventh section, the words: "*Provided*, That the total sum to be expended by said commission, for all purposes whatever, shall not exceeed $50,000 a year up to January, 1876, and during the year 1876 shall not exceed $250,000, or a total sum of $500,000 during the entire existence of the commission."

"The amendment to the amendment was disagreed to.

"The question next recurred upon the amendment of Mr. Sargent, as follows:

"'Strike out all after the word "commissioner," in line 2, section 7, and insert "or other officers provided by this act from the Treasury of the United States," so it will read:

"'SEC. 7. *And be it further enacted*, That no compensation for services shall be paid to the commissioners or other officers provided by this act from the Treasury of the United States.'

"The amendment was agreed to." (Cong. Globe, p. 423.)

With this amendment the bill went to the Senate, where it was referred to the Committee on Foreign Affairs, and this committee reported the bill with an amendment, to add at the end of the seventh section, "and the United States shall not be liable for any expenses attending such exhibition, or by reason of the same." (Cong. Globe, 3d sess. 41st Cong., p. 1293.

The amendment was agreed to without dissent, and the bill, as amended, passed the Senate. Before the passage of the bill, Senator Sherman, of Ohio, said:

"I do not think the Senator from Pennsylvania ought to be worried any more about this bill. It simply authorizes the people of Philadelphia, at their own expense, to have a show; and it is a very proper place; and I think the heart of every American will respond that, of all places in this country, Philadelphia is the place where this exhibition ought to be held." (Cong. Globe, 3d sess. 41st Cong., p. 1682.)

The Senate amendment was concurred in by the House, and the first act looking to the Centennial Exhibition thus became a law.

The next law of Congress on this subject was approved June 1, 1872, and is known as the act incorporating the Centennial Board of Finance. By the ninth section of this act it was provided, *inter alia*, as follows:

"But nothing in this act shall be so construed as to create any liability of the United States, direct or indirect, for any debt or obligation incurred, nor for any claim, by the Centennial International Exhibition, or the corporation hereby created, for aid or pecuniary assistance from Congress or the Treasury of the United

States, in support or liquidation of any debts or obligations created by the corporation herein authorized."

The act of March 3, 1871, provided that whenever the President of the United States should be informed by the governor of Pennsylvania that provision had been made for the erection of suitable buildings for the purpose of the proposed exhibition, the former should make proclamation of the facts, and communicate with the diplomatic representatives of other countries on the subject. In pursuance thereof, the President issued his proclamation on the 3d of July, 1873, in which he stated that the governor of Pennsylvania, on the 24th day of June, 1873, informed him that provision had been made for the erection of said buildings, and for their exclusive control by the Centennial Commission. (18 U. S. Stats., 884.) The Government withheld all recognition of the national character of the exhibition until officially informed that suitable provision had been made therefor, so that the United States might not be held to any of the expenses thereof.

Congress passed another act, approved June 5, 1874, requesting the President to extend, in the name of the United States, a respectful and cordial invitation to the governments of other nations to take part in the exhibition, with this proviso: "That the United States shall not be liable, directly or indirectly, for any expenses attending such exposition, or by reason of the same." (18 U. S. Stat. at Large, 53.)

Another act was passed, approved June 16, 1874, authorizing medals to be prepared at the Philadelphia Mint for the Centennial Board of Finance, "upon payment of a sum not less than the cost thereof." (18 U. S. Stat. at Large, 76.)

In the legislative, executive, and judicial appropriation bill, approved March 3, 1875, the sum of $30,750 was appropriated to pay for engraving and printing the certificates of stock, with this proviso: "That this appropriation shall not be construed as in any manner committing the Government of the United States to any other payment whatever to meet the expenses of said exhibition." (18 U. S. Stat. at Large, 375.)

The next and last act of Congress on the subject of the Centennial Exhibition is the act of February 16, 1876, which appropriated $1,500,000 to complete the centennial buildings and other preparations, with this proviso: "That in the distribution of any moneys that may remain in the treasury of the Centennial Board of Finance after the payment of its debts, as provided for by the tenth section of the act of Congress, approved June 1, 1872, incorporating said Centennial Board of Finance, *the appropriation hereinbefore made shall be paid in full into the Treasury of the United States before any dividend or percentage of the profits shall be paid to the holders of said stock.*"

The foregoing acts are all upon the same subject, and they are to be construed together.

In the case of the United States *vs.* Freeman (3 How., 564) this court said: "The correct rule of interpretation is that if divers statutes relate to the same thing, they ought all to be taken into consideration in construing any one of them, and it is an established rule of law that all acts *in pari materia* are to be taken together, as if they were one law." (Doug., 30; 2 Term Rep., 387, 586; 4 Maule and Selw., 210.) "If a thing contained in a subsequent statute be within the reason of a former statute, it shall be taken to be within the meaning of that statute." (Lord Raym., 1028.)

Construing the statute last passed as within the reason of former statutes, there can be but one conclusion as to the meaning of the proviso last passed, namely, that the money appropriated should be regarded as a loan to be returned to the United States at the close of the exhibition. This construction is in harmony with all other acts *in pari materia*, and the only one that is consistent with the very letter and spirit of the appropriation act itself.

4. It was the intention of Congress in the adoption of the proviso in question to provide for the return of the money to the United States before any dividend whatever should be paid to the stockholders.

This legislative intention is clearly evinced by the proceedings and debates in Congress pending the consideration of the bill. As the bill was originally introduced the proviso in question was so worded that the Government should share equally with the holders of the stock, after the payment of the debts, as provided in the tenth section of the act of June 1, 1872. This feature was objectionable, and Mr. Savage, of Ohio, pointed out and condemned the provision. He said: "Instead of there being a provision in this bill to return the whole $1,500,000 to the Treasury of the United States as a loan that the Government had advanced, it is only proposed that the Government shall share *pro rata* with the holders of said centennial stock. * * * Would it not be better, if this money is to be appropriated at all, would it not be more just to the people that the Government, nstead of receiving only a *pro-rata* amount, should be put upon the footing of a creditor, rather than a stockholder in the institution, *and receive the whole amount appropriated before any division is made among the stockholders?*" (Cong. Rec., 44th Cong., 1st sess., p. 564.)

In order to remove the objection so clearly made by Mr. Savage, an amendment was proposed, explained, and adopted, as will appear more fully by the following extracts from the Congressional Record:

"Mr. SPRINGER. I now move to amend the bill by striking out the words 'share equally with the holders of the said centennial stock, and a like percentage thereon be paid into the Treasury of the United States as may be paid to the holders of the said stock,' and inserting in lieu thereof the words, 'to be paid in full into the Treasury of the United States before any dividend or percentage of the profits shall be paid to the holders of said stock.' The proviso, as amended, will then read: '*Provided*, That in the distribution of any moneys that may remain in the treasury of the Centennial Board of Finance for [after] the payment of its debts, as provided for by the tenth section of the act of Congress, approved June 1, 1872, incorporating said Centennial Board of Finance, the appropriation hereinbefore made shall be paid in full into the Treasury of the United States before any dividend or percentage of the profits shall be paid to the holders of said stock.'

"The object of this amendment is to provide that if there should be a dividend when this exhibition is over, the United States shall come in as a preferred creditor, instead of sharing equally, as this bill now provides, with the stockholders of this corporation. In other words, the United States having made a voluntary contribution, as this bill provides, we shall be first entitled to have the people's money back before any of it goes into the pockets of private individuals as a dividend.

"Before I sit down I desire to say, that while I am anxious for the full success of this Centennial Exhibi-

tion, at the same time I regard this bill as simply a proposition to place in the treasury of the Finance Board $1,500,000, to be divided among the stockholders after the exhibition is completed. If we pass this bill, they will have $1,500,000 more to divide; if we do not pass it, they will have $1,500,000 less. We have farmed out this exhibition to a corporation which is rich enough to pay its own way, and is to receive all the advantages and receipts of the exhibition." (Cong. Record, 1st sess. 44th Cong., pp. 631–632.)

The amendment was agreed to, without discussion, or other explanation of the meaning intended to be conveyed than that given by the mover thereof at the time.

Senator Edmunds, chairman of the Judiciary Committee of that body, pending the discussion of the bill in the Senate, as it passed the House with the above amendment, said:

"I understand the words 'any dividend,' followed by the words 'or percentage of the profits,' to mean that there shall be no dividends of any kind. When a private corporation is wound up and there are no profits at all, the stockholders get back their original investment, if it has not been lost, by a dividend. It is a term of art. A dividend is a thing which is to be divided according to the interests of the persons who are entitled to share in the division. There may, therefore, just as properly be a dividend of capital as of profits. To guard against dividends of capital in private corporations there is always a provision in charters and general laws that there never shall be a dividend of any part of the capital stock of such a concern until it is wound up. So then, in point of fact, I should have said there was no doubt about it but for the fact that my friend from California

thinks otherwise, that this was a clear provision against any division of any part of the capital, profits, or assets of the concern until this money shall have been repaid to the United States." (Cong. Rec., 1st sess. 44th Cong., p. 962.)

The following propositions are cited to show that the legislative intention is to govern in the construction of statutes:

The words of statutes are not to be considered only, but rather the intent of the matter is to be weighed; for many times things which are within the words of statutes are not within the purview of them, *which extends no farther than the intent of the makers*, which is the principal thing to be considered. (19 Viner's Ab., p. 519, sec. 81.)

In acts that are to be construed according to the intent and meaning of the makers of them, *the original intent* and meaning is to be observed. (*Ib.*, sec. 82.)

Even in penal laws the intention of the legislators is the best method to construe the law. (*Ib.*, sec. 83.)

When the terms and letter of a statute are obscure and difficult to be understood, we must resort to the intent of the makers. (*Ib.*, sec. 89, p. 520.)

A thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter; and a thing which is within the letter is not within the statute unless it be within the intention of the makers. And such construction ought to be put upon it as does not suffer it to be eluded. (Bac. Abr. Stat., 1, 5, 10; 15 Johns. R., 381.)

The fairest and most rational method to interpret the will of the legislator is by exploring his *intentions at the time* when the law was made. (1 Blackstone, 59.)

The intention of the legislature, when discovered, must prevail, any rule of construction declared by previous acts to the contrary notwithstanding. (4 Dall., 14.)

Every technical rule as to the construction or force of particular terms must yield to the clear expression of the paramount will of the legislature. (2 Peters, 662; 15 Johns., 381; 3 Cowen, 96; 4 Keys, 274; 3 Howard, 565.)

5. The national character of the exhibition, recognized by Congress, imposed no obligation on the Government to make any appropriations to insure the financial success of the corporation.

On the contrary, all the subscriptions to the capital stock were made prior to the act of February 16, 1876, and in every act prior to this date there was a provision to the effect that the United States should not be liable, directly or indirectly, for any debt or obligation of the corporation, or for aid or pecuniary assistance from Congress, or the Treasury of the United States, *in support or liquidation of any debts or obligations created by the corporation.* (Act June 1, 1872, sec. 9, *et al.*)

All subscriptions were made in view of the foregoing provisions, and the stockholders have never acquired any rights in the premises which the act of February 16, 1876, as construed by appellant, deprives them of, or abridges in the least. But if appellees' construction is given to the act of February 16, 1876, Congress has become liable not only for the support of the exhibition,

but to refund to the stockholders the amount of their subscriptions to the extent of a million and a half of dollars.

Such a construction cannot be maintained without a palpable disregard of the letter and spirit of the act of February 16, 1876, and all other acts in *pari materia*.

6. "Honor and good faith."

The preamble to the act of February 16, 1876, recites the fact that the President of the United States had invited foreign nations to take part in the exhibition, and that such foreign nations had accepted to the number of thirty-eight, "thereby rendering proper arrangements for the coming ceremonies on the part of the Government of the United States a matter of honor and good faith."

But the honor and good faith of the Government did not require Congress to appropriate a dollar toward the exhibition, for every act of Congress, including the act inviting foreign nations to take part in the exhibition, as well as *the letters of invitation to foreign nations*, contained a proviso to the following effect: "That the United States shall not be liable, directly or indirectly, for any expenses attending such exposition or by reason of the same." (18 U. S. Stats. at Large, 53.)

The following extract from the remarks of Mr. Cameron, of Pennsylvania, in the Senate, pending the consideration of the act approved February 16, 1876, gives another explanation for applying to Congress for assistance.

Mr. Cameron said: "Two years ago when this question was up I assured the Senator from Vermont that I would not ask anybody to vote for an appropriation for the Centennial Exposition. Upon my assurance he with-

drew his opposition to the bill then pending, and by the withdrawal of his opposition the bill passed. I regret now that there is a demand for an additional sum of money. That would not be, however, if there had not been a new constitution adopted by our State soon after the time I made this pledge to the Senator from Vermont, which contained a clause preventing any appropriation for any such purpose from the State treasury." (Cong. Rec., 1st sess. 44th Cong., p. 963.)

The governor of Pennsylvania, however, did, on the 24th day of June, 1873, inform the President of the United States *that provision had been made* for the erection of the buildings, and for the exclusive control of the commission of the proposed exhibition. (Proclamation of President Grant, Mr. Smith's brief, p. 12.)

In view of all the acts of Congress on the subject, and other facts and circumstances of which the court may take notice, we submit that national honor and good faith are more than observed, by a loan, as provided in the act of February 16, 1876, of $1,500,000 to the Centennial Board of Finance, to be returned to the United States before any dividend should be made to the stockholders.

7. Assuming, for the sake of argument, that there was an honorable obligation on the part of the United States to aid the exhibition, after the failure of the State of Pennsylvania to make necessary provision therefor, such obligation was not to the stockholders, but to the general public.

All subscriptions had been made with ample notice that the Government would under no circumstances aid the enterprise by an appropriation from the National Treasury. Hence the stockholders had no claim upon

the Government, and Congress could have withheld entirely, or appropriated with conditions, any sum of money whatever. And by accepting the appropriation the corporation accepted the conditions upon which it was made, and is bound to comply therewith.

8. A careful inspection of the act of February 16, 1876, and of other acts of Congress *in pari materia*, and of the proceedings and debates of Congress thereon, makes it evident that Congress intended by the first-named act to create the relation of debtor and creditor between the centennial corporation and the United States. The language used, it is true, is the ordinary language of an appropriation, but such is the only language by which money can be drawn from the Treasury. But the proviso is as much a part of the act as are the appropriating words. And while no evidences of debt were required from the board, such as notes and mortgages, yet a debt is collectible without such evidences; and in this case the act of Congress and the warrants issued by the Treasurer of the United States in pursuance thereof would be evidences quite sufficient for practicable purposes.

9. While the relation of debtor and creditor was created by the act in question, yet the repayment to the Government was only to be made by the corporation in case there should be any money in the Treasury after the payment of its debts, *as provided for by the tenth section of the act of Congress approved June* 1, 1872; that is, the ordinary expenses. It cannot be said that a statute which prescribes priority of payment destroys the relation of debtor and creditor between all parties except as to those having preferred claims. The act of February 16, 1876, established the priority of claims as

follows: 1st, the ordinary claims for expenses of the exhibition; 2d, the money advanced by the United States; and 3d, the distribution of the remaining assets among the stockholders. Congress might perhaps have used language more explicit and direct, but it would be difficult to extract a different meaning from the context than that which we have here given.

10. The tenth section of the act of June 1, 1872, entitled the stockholders to a satisfaction of their stock out of whatever assets remained after the payment of the debts of the corporation. But by the act of February 16, 1876, the appropriation thereby made and the acceptance thereof constituted the relation of debtor and creditor between the United States and the corporation, and the Government's claim was made payable before any dividend whatever should be paid to the stockholders. Thus the stockholders have no more right to divide among themselves the Government's money than they have to deprive ordinary creditors of their claims.

Congress deprived the stockholders of none of their vested rights by advancing to them, in their extremity, a certain sum of money in the nature of a loan, not to be repaid until the ordinary liabilities of the corporation had been discharged. The directors of the corporation acted for the stockholders in receiving the Government loan, and all parties are bound by the conditions upon which the loan was made, whatever those conditions may be.

In the opinion of his honor Mr. Justice Strong, in the court below, (Transcript of Record, page 21,) it is stated:

"The stockholders were thus [by the tenth section of the act of 1872] entitled to a satisfaction of their stock

out of whatever assets remained after the payment of the debts of the corporation. It is not to be assumed that Congress intended to take away those rights without the consent of the stockholders. The directors of the corporation could not bargain them away. And there are no words of repeal in the latter act, nor is there any necessary implication of an intent to repeal. The proviso, therefore, must receive a construction consistent, so far as possible, with the provisions of the act of 1872."

This construction is not insisted upon by counsel for the International Exhibition Company, one of the appellees, nor is it in harmony with the evident intentions of the authors of the measure. As the bill was originally introduced in the House, the proviso was in the words following:

"*Provided*, That in the distribution of any moneys that may remain in the treasury of the Centennial Board of Finance, after the payment of its debts, as provided for by the tenth section of the act of Congress, approved June 1, 1872, incorporating said Centennial Board of Finance, *the appropriation hereinbefore made shall share equally with the holders of said centennial stock, and a like percentage thereon be paid into the United States Treasury as may be paid to the holders of said stock.*" (Cong. Rec., 1st sess. 44th Cong., p. 448.)

There can be no doubt as to the meaning of this language. And yet, if the tenth section of the act of 1872 entitled the stockholders to a satisfaction of their stock out of whatever assets remained after the payment of the debts of the corporation, and if Congress could not take away those rights without the consent of the stockholders, and if the directors of the corpora-

tion could not bargain them away, then we submit that if the proviso, as originally introduced, had been enacted into law, without amendment, the stockholders would have been entitled to all the "remaining assets," and the Government would have been entitled to no return whatever of the money appropriated by it. We must presume that the authors of the measure were honest and were acting in good faith, and that they were not using language calculated to deceive. But if the original proviso was intended to allow the stockholders full satisfaction of their stock first, to the exclusion of the United States, and then to share equally with the United States in whatever surplus might remain, such intention was sinister, or certainly not expressed, and is not to be presumed, because the language used negatives such presumption. And if such construction cannot fairly be given to the proviso as it was originally introduced, we submit that the amended proviso is equally free from such construction. If the proviso as originally introduced allowed the Government to share *pro rata* with the stockholders, after ordinary debts were paid, (and the language thereof admits of no other construction,) the proviso as amended and passed gave the Government priority over the stockholders and required its appropriation to be repaid into the Treasury before there could be any dividend paid to the stockholders.

11. "*Dividend or percentage of profits.*"—It is said that the word "profits" occurs for the first time in the act of February 16, 1876, and that there is thus evinced a legislative intention to change the meaning of terms used in former statutes, and that the rights of the United States as a distributee are thus confined to profits.

The word "dividend" may refer to any division of assets, and in this statute evidently refers to the division of "remaining assets" after payment of ordinary debts, as provided in section ten of the act of 1872. And if the proviso had used no other word than "dividend," it is believed that there would have been no room for doubt as to the legislative intent. But the words "percentage of the profits" were evidently used to accomplish another and additional purpose. If the proviso had not contained these words, what would have prevented the Centennial Board of Finance, at the end of each month of the exhibition, from striking a balance between the receipts and expenditures for such month and dividing a "percentage of the profits" among the stockholders? In this way a dividend of twenty per centum per month could have been made and divided among the stockholders as the exhibition progressed. They would have thus received a full return of the amount of their stock, and at the close of the exhibition the receipts from the sale of the old buildings would not have been sufficient to pay more than the ordinary expenses still unpaid. It was to guard against dividends of profits from time to time, or at the close of the exhibition, before the conversion of the property into cash, that the phrase "percentage of the profits" was evidently used.

The court in construing the proviso in the act of February 16, 1876, and the amendment thereto should rather seek to give effect to the language used therein, than to limit or enlarge the meaning by reference to the tenth section of the act of June 1, 1872, for the last statute passed ought to control where its language is so free from doubt as to stand of itself as a substantive propo-

sition. The clear and unmistakable import of the language of the proviso in question is this, that *after* the payment of current expenses, and *before* any dividend of any kind should be paid to the stockholders, the appropriation made by Congress should be paid in full into the Treasury of the United States.

12. Capital stock is regarded as a permanent investment. The excess of current receipts over current expenditures is regarded as profits. The investment remains, but the profits may be divided from time to time as the corporation may direct. The directors of a company have no right to declare a dividend, except from the profits of the company. (Stringer's case, Law Cases, 4, Ch. 475.)

It is never required that the receipts over expenditures shall equal the capital stock before a dividend of profits can be declared. If this were the case, there would be few dividends fr om private corporations. And if the United States can only be repaid out of the profits, as appellees claim, then we submit that the Government is entitled to the excess of receipts over current expenditures, and that the corporation cannot claim any of such excess to indemnify it for loss on the permanent investment, to the conclusion of the claim of the United States.

13. The Government having advanced money to the centennial corporation, to be returned in acc ordance with the provisions of the act of Congress, it ther eby becomes a creditor of the corporation, and is entitled to be paid before any of the assets of the corporation can be divided among the stockholders.

"The stock and other property of private corporations is deemed a trust-fund for the payment of the

debts of the corporation; so that the creditors have a lien or right of priority of payment on it in preference to any of the stockholders in the corporation. * * * After dissolution, such property will be held affected with a trust, *primarily* for the creditors of the company, and subject to their rights; *secondarily*, for the stockholders in proportion to their interest therein." (2 Story Eq. Jur., sec. 1252; 8 Georgia R., 493; Ang. & Ames, sec. 779*a*; 15 Howard, 312; 2 Kent Com., 307*n*.)

14. The words "remaining assets" used in the tenth section of the act of June 1, 1872, were intended to embrace the proceeds of the sales of the property of the corporation, *i. e.*, the capital originally invested less depreciation in value; and the excess of the receipts over current expenditures, *i. e.*, the profits. These funds were designated in the proviso "any moneys that may remain in the treasury of the Centennial Board of Finance after the payment of its debts," and the words "dividend or percentage of the profits," in the proviso of the act of February 16, 1876, were evidently used to cover both the proceeds of the original investments and the excess of receipts over current expenditures. The use of the word "dividend" as applicable to capital, and "percentage of the profits" as applicable to the excess of receipts over expenditures, instead of producing ambiguity or doubt, ought rather to be regarded as an effort in the direction of statutory precision, deserving judicial recognition and encouragement.

15. If it had been intended to give the stockholders a claim prior to that of the United States on the remaining assets, words would have been used to convey that intention. The proviso would in that case have read as follows: "*Provided*, That in the distribution of any mon-

eys that may remain in the treasury of the Centennial Board of Finance after the payment of its debts, as provided for by the tenth section of the act of June 1, 1872, the appropriation hereinbefore made shall be paid into the Treasury of the United States out of any moneys that may remain in the treasury of the Centennial Board of Finance after the stockholders shall have been paid in full the amount of their stock." If this had been the legislative intention, it is presumed that legislators would have chosen language indicating such purpose. It would have been an easy matter to have done so.

16. It was not necessary that the act of February 16, 1876, should repeal, *in totidem verbis*, the provisions of section 10 of the act of June 1, 1872, in order to give effect to the statute last passed. The rule governing in such cases was distinctly and clearly stated by Mr. Justice Strong in the case of Henderson's Tobacco, 11 Wallace, 657, wherein the court held as follows: "Statutes are, indeed, sometimes held to be repealed by subsequent enactments, though the latter contain no repealing clauses. This is always the rule when the provisions of the latter are repugnant to those of the former, so far as they are repugnant. The enactment of provisions inconsistent with those previously existing, manifests a clear intent to abolish the old law. In The United States *vs.* Tynen, 11 Wallace, 92, it was said by Mr. Justice Field that "where there are two acts upon the same subject, the rule is to give both effect if possible; but if the two are repugnant in any of their provisions, the latter act, without any repealing clause, operates to the extent of the repugnancy as a repeal of the first; and where the two acts are not, in express terms,

repugnant, yet, if the latter act covers the whole subject of the first, and embraces new provisions, plainly showing that it was intended as a substitute for the first act, it will operate as a repeal of that act. For this several authorities were cited, some of which have been cited on the present argument. This is undoubtedly a sound exposition of the law."

Applying the rule here laid down to the case at bar, it follows that, if there be any repugnancy between the two acts in question, the act last passed operates to the extent of the repugnancy as a repeal of the first act, without any repealing clause. By the terms of section 10 of the act of 1872, the stockholders were entitled, at the close of the exhibition and upon the conversion of all the property into cash and the payment of ordinary liabilities, to the remaining assets *pro rata* according to their respective subscriptions. At that time Congress had made no appropriation in aid of the exhibition, and had no rights to protect or claim to secure. But by the act of February 16, 1876, Congress came to the aid of the corporation, advanced one million and a half of dollars, and made provision for its return into the Treasury of the United States before any division of the assets could be made among the stockholders. The latter act must prevail.

If, however, there were no repeal or modification of the tenth section of the act of 1872, by the proviso in question, still the tenth section itself postpones the rights of the stockholders to any portion of the assets until "after the payment of all the liabilities" of the corporation; and the sum advanced by the Government, and received by the corporation with the conditions contained in the appropriating act, is as much a part

of its liabilities as were the ordinary expenses of the exhibition. It was therefore competent for Congress, after the payment of all liabilities, *as provided by the tenth section of the act of* 1872, to make the Government appropriation passed in February, 1876, which became, *ipso jure*, another liability or debt of the corporation, a claim payable before the stockholders should receive any portion of their subscriptions.

17. The counsel for appellees cites the opinion of Mr. Justice Davis in the case of The United States *vs.* The Union Pacific Railroad Company, (9 U. S. Reps., 79,) where it was held that courts are not at liberty, in construing statutes, to recur to the views of individual members in debate. In that case there was a running debate for several days, in which conflicting opinions were expressed, and the court, very properly, held that such views expressed *in debate* could not be considered in construing the statute. But we submit that a statement made at the time a proposition is offered, and in explanation of the object to be accomplished by it, followed by the adoption of the proposition without further explanation, does not come within the rule laid down by Mr. Justice Davis as to "the views of individual members *in debate*." For, in the one case, it does not appear and could not be ascertained which of the views expressed in debate, *pro* and *con*, were the views of the law-makers; but in the other case, that at bar, it appears that there was no debate on the proposition, but merely a brief statement of the object contemplated by the mover thereof, which proposition, with the explanation given, was immediately adopted. The cases are entirely different, and the rule laid down in 9 United States Reports, 79, does not conflict with the position of appellant's counsel in this case.

18. In conclusion, we insist—

That Congress had no authority under the Constitution to make the centennial appropriation, and that for this reason the money should be returned to the Treasury of the United States.

That if Congress had such authority, then it could secure priority of payment to the United States over all other creditors.

That the act making the appropriation did provide, in language which cannot be fairly construed otherwise, that the United States should be repaid the full amount of such appropriation *before* any dividend whatever should be paid to the stockholders of the Centennial Board of Finance.

That such was the unmistakable intention of Congress, is evinced by the act itself, by the proceedings and debates at the time the act was pending, and by all other acts of Congress *in pari materia.*

That subscriptions were made to the capital stock of the corporation by individual citizens, by municipalities, and the several States in view of the fact that Congress had refused repeatedly to aid pecuniarily the enterprise, and that such subscriptions were made mostly as voluntary contributions, and without any expectation of a return thereof from the receipts of the corporation, much less from an appropriation by Congress.

That the city of Philadelphia and the States of Pennsylvania and New Jersey, the subscribers to the greater portion of the capital stock, have already received incalculable benefit on account of the location of the exhibition, a benefit vastly greater than the whole amount of their aggregate subscriptions to the capital stock of

the centennial corporation. That such subscriptions were made with a view to the advantages to be derived from the location of the international exhibition at Philadelphia, and that the subscribers have already received the full share of their compensation.

That national honor and good faith require that the $1,500,000 appropriated by Congress should be returned to the public Treasury in accordance with the terms of the act making the appropriation. That such return will deprive the stockholders of none of their rights; that it will carry out the law of Congress according to its letter and spirit, and do justice to all concerned.

WILLIAM M. SPRINGER,
Of Counsel for Appellant.

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Supreme Court of the United States

George Eyster, Assistant Treasurer of the United States at Philadelphia, Appellant,

vs.

The Centennial Board of Finance *et al.*, Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Brief of Argument for Appellees, Patterson, Lewis, Gill, the State of New Jersey, and the National State Bank of Camden, New Jersey.

WM. HENRY RAWLE,
B. WILLIAMSON,
For Appellees.

Allen, Lane & Scott, Printers, 235 South Fifth Street, Philadelphia.

In the Supreme Court of the United States.

George Eyster, Assistant Treasurer of the United States at Philadelphia, Appellant,

vs.

The Centennial Board of Finance et al., *Appellees.*

Of October Term, 1876.

No. 988.

BRIEF OF ARGUMENT FOR APPELLEES, PATTERSON, LEWIS, GILL, THE STATE OF NEW JERSEY, AND THE NATIONAL STATE BANK OF CAMDEN, NEW JERSEY.

I. The Centennial Celebration was a National Undertaking.

The evidence is contained in every act on the subject, thus:—

Act of 1871.

Preamble.—"The Exhibition shall be a *national celebration* in which the people of the whole country should participate."

Section 1. "Shall be held under the auspices of the United States."

Section 3. "Commissioners shall be appointed by the President of the United States."

SECTION 6. "Commissioners shall report to Congress."

SECTION 7. "United States shall not be liable for any expense attending such Exhibition."

SECTION 8. "President shall make proclamation of the time when such Exhibition will open."

ACT OF 1872.

PREAMBLE.—"Exhibition of *national resources* and our *nation's progress*."

"Such provisions should be made for procuring the funds requisite for the purposes aforesaid as will enable all the people of the United States, who have shared the common blessings resulting from national independence, to aid in the preparation and conduct of said International Exhibition and memorial celebration, under the direction of the Commissioners of the United States."

SECTION 9. Secretary of the Treasury to prepare certificates of stock.

SECTION 10. Commission to report financial results to the President.

SECTION 13. Commission to report finally to the President.

THE PRESIDENT'S PROCLAMATION OF 1873.

"By act of Congress providing for *national celebration*."

"In behalf of this Government and people, I cordially commend the celebration and exhibition."

ACT OF 1876.

PREAMBLE.—"Rendering proper arrangements for the coming ceremonies on the part of the Government of the United States a matter *of honor and good faith*."

SECTION 2. Bond to be given to United States.

So much for the appellants' statement (page 20), "In all the acts, from first to last, it was proposed to accomplish this [the holding of the Centennial Exhibition] *through the machinery of a private corporation.*"

2. THE EFFECT OF ACT OF FEBRUARY 16TH, 1876.

But the seventh section of the act of 1871, having provided that the United States should not be liable for the expenses attending the exhibition, the result was that everything about it was national except the nation's money contribution, and as there was none, the money must be sought elsewhere Hence was created the Centennial Board of Finance, who were empowered to receive subscriptions and issue certificates of stock, and as part of the machinery was passed the tenth section of the act of June 1st, 1872 (17 Stat., 209), which provided, "That as soon as practicable after the said exhibition shall have been closed, it shall be the duty of said corporation to convert its property into cash, *and after payment of all its liabilities, to divide its remaining assets among its stockholders,* pro rata, *in full satisfaction and discharge of its capital stock.*"

Had legislation ceased here, it is clear that the distribution of the funds would have been—

1. Payment of creditors;
2. Redemption of capital stock;
3. Division of profits among the stockholders by a *pro rata* dividend.

But the subscribed capital still proving inadequate, it became necessary to provide additional funds, or incur the disgrace of a failure. At this point, the United States directly intervened, and by the act of February 16th, 1876 (19 Statutes, 3), declared it to be "*a matter of honor and good faith*" on the part of the Government to avert the threatened disaster, and appropriated the balance required.

The act is as follows:—

"SECTION 1. *Be it enacted, &c.*, That the sum of one million five hundred thousand dollars, to complete the Centennial buildings and other preparations, be and the same is hereby appropriated out of any moneys in the United States Treasury not otherwise appropriated, which shall be paid on the drafts of the president and treasurer of the Centennial Board of Finance, one-third immediately after the passage of this act, and the remainder in four equal monthly payments: *Provided*, That in the distribution of any moneys that may remain in the treasury of the Centennial Board of Finance, after the payment of its debts, as provided for by the tenth section of the act of Congress approved June 1st, eighteen hundred and seventy-two, incorporating said Centennial Board of Finance, the appropriation hereinbefore made shall be paid in full into the treasury of the United States, before any dividend or percentage of the profits shall be paid to the holders of said stock: *Provided, also*, That the Government of the United States shall not, under any circumstances, be liable for any debt or obligation of the United States Centennial Commission or the Centennial Board of Finance, or any payment in addition to the foregoing sum.

"SECTION 2. That the money by this act appropriated shall be paid to the treasurer of the Centennial Board of Finance only after he and the president of the board shall have executed a bond in the sum of $500,000 to the United States, with sufficient security, to be approved by the Secretary of the Treasury, for the safe-keeping and faithful disbursement of the sum hereby appropriated."

In the whole act there is not an expression evincing the slightest intention to create the relation of debtor and creditor; on the contrary, every expression used negatives the idea that a loan was intended. The words are the ordinary words of an appropriation bill, and had the act stopped before the proviso, no doubt could have existed. "That the sum of one million

five hundred thousand dollars be and the same are hereby *appropriated* out of any money in the United States Treasury not otherwise *appropriated.*" And in the disputed proviso itself, it is expressly declared to be an appropriation. "That in the distribution of any moneys * * the *appropriation* hereinbefore made shall be made in full, before any dividend or percentage of the profits."

But it is said that the proviso that the "appropriation hereinbefore made shall be paid in full before any *dividend or percentage of profits* shall be paid to the stockholders," alters the case. And it is further said (Appellant's Brief, page 25), "It is the use of the words 'percentage of profits' that permits of any argument. Without these, the meaning to prohibit any division, either of capital or profits, would be too plain for discussion."

But this seems clearly erroneous. For what does the word "dividend" mean? The dictionaries tell us:—

"Dividend. A part or share; particularly, the share of the *interest or profit of stock* in trade or other employment which belongs to either proprietor, according to his proportion of the stock or capital."—*Webster.*

When a railroad company declares a "*dividend,*" does any one suppose that the stockholders will receive a portion of their capital?

Does the announcement that a stock corporation is about to pay a "dividend," convey to even the most ignorant mind the idea that it will be deducted from the face value of the certificate of stock?

If "dividend" standing alone means a division of capital, then the larger the dividend, the more impoverished the stockholder becomes, and the lower the value of the shares.

So if "dividend" standing alone means a division of either capital *or* profits, why insert the words "percentage of profits"? They can have no possible meaning, and this has not been attempted to be answered in the brief of the appellant; for upon his own construction, if dividend, *per se*, bears the meaning he

maintains, then it obviously includes every payment to the stockholders of any kind whatever, whether of capital or profits. But, in truth, the difference between a distribution of capital and a dividend of profits is so palpable that its knowledge by Congress is beyond doubt.

But, say the appellants, if dividend primarily means profits, why add "a percentage of the profits"? The answer is this:—A loose, incorrect method of misusing the word "dividend" exists, which though incorrect is yet sometimes current; for example, of calling a *pro rata* payment from the estate of a bankrupt a dividend.

This user of the word is, of course, erroneous, and to exclude this construction, and place the matter beyond doubt, there is added to the word "dividend," its definition, viz., percentage of the profits. It is here that the full force and effect of the words are perceived. They are not surplusage—they stamp the meaning. And if the debates were evidence of the intention, it would plainly appear that this whole matter was discussed in the most intelligent way in the Senate.

The remarks of the Court below on this branch of the case leave no room for argument.

"What is meant by 'dividend or percentage of the profits'? It is observable that in all the legislation respecting the Centennial Exhibition the word 'profits' here first appears. In that of 1872 the residue, after payment of liabililties, was called 'remaining assets,' and in a former part of this act it was called 'moneys that remain.' But when the fund is mentioned, to which the United States may resort, in case there is such a fund, it is called profits. The phraseology is changed, and with it, we think, the meaning. So far as the United States has rights as a distributor, the subject for distribution is 'profits,' not 'remaining assets,' not capital. Before any dividend or percentage or proportion of the profits may be paid to the stockholders, the appropriation must be paid into the United States Treasury. If there are no profits, the Government has no claim. Now, what are the profits of a corporation that has a capital stock? Very

plainly only what has been gained beyond the stock. They are always acquisitions beyond the investment or expenditures. Nobody would think a tax on the profits of a bank or an insurance company, or, indeed, of any corporation, was a tax on its capital or a tax on its entire property, if that property had been converted into cash in the process of winding up. Congress, in the proviso, is speaking of the profits of a corporation, and it is to them, and them only, it sets up a claim. But in this case there were no profits. The assets remaining after the payment of debts, and now for distribution, are only remnants of the capital, and insufficient to return what the stockholders paid in.

"We think the word 'dividend,' as well as the word 'percentage,' points to profits and not to capital. They are synonyms as here employed. That the word dividend is sometimes used to describe a distribution of capital may be admitted, but such a use is abnormal. It is more commonly used to denote a division of profits, and very evidently it was so employed in this proviso. It was not said dividend unqualifiedly, or dividend of the remaining assets, or dividend of moneys that remain after payment of debts, but it was used in connection with profits; 'dividend' or percentage of the profits—that is, as we understand the phrase, dividend portion or percentage of the profits. If it was intended to embrace a division of all the money remaining in the treasury of the board, why were the words 'or percentage of the profits' added? If the amount appropriated was meant to be paid before the stockholders could get anything, those added words were totally unnecessary and unmeaning. The introduction of the word profits could have had no other object than to designate the subject of the dividend or percentage. If it was intended to give the United States a prior claim on the entire remaining assets, it would have been sufficient to have said before any dividend or division shall be made among the stockholders—and we are not at liberty to say the added words have no meaning."

The effect of the proviso was to provide for a repayment of this *appropriation* before any division of *profits*, and, after its

that the latter may not be a repeal of the former by implication. The same view has been taken where powers under several acts are such as may well subsist together." Dwarris on Statutes, 674; Amer. Ed., 156.

So this Court, in McCool *vs.* Smith, 1 Black, 470, has said, "a repeal by implication is not favored; the leaning of the Courts is against the doctrine, if it be possible to reconcile the two acts of the legislature together."

Authorities might be multiplied indefinitely.

Now, where is the palpable inconsistency between these acts? Where the impossibility of reconciling them?

The word "profits" appears for the first time in the act of 1876; the act of 1872 only mentioning "remaining assets," and it would seem clear that the act of 1872 did not especially contemplate the realization of profits,—else why the phrase in *full satisfaction*,—and that the act of 1876 particularly provided for that contingency, and, without defeating any declared rights, further provided that such profits should not be paid until after repayment to the United States.

In a word, the act of 1872 related to a distribution of *capital*—the act of 1876, to a division of *profits*.

Such construction renders the acts harmonious instead of discordant.

Again, were this a case of State legislation, it could hardly be doubted, at this day, that a State which had by statute directed the manner in which assets of a corporation should be divided after payment of its debts, could not afterwards impair the obligation of that contract, and without the assent of the stockholders, duly obtained at a general meeting of that body, lessen the value of their property by a later statute which should entitle the State to come in as a creditor. And although there is no constitutional restriction on the power of Congress to pass such laws, yet an intention will not readily be imputed to a higher legislative body to do that which is denied to a lower one, and, upon the question of construction, it is well settled that

every interpretation of a statute is to be avoided which may impute wrong to the legislature.

A word as to the appellants' introduction of the debates (Brief, pages 26 and 28).

It is matter of general principle, and has been expressly decided by this court, that the motives or views of individual members of Congress are inadmissible in the construction of statutes: United States *vs.* Union Pacific Co., 91 U. S., 72; and this is well justified by the reasoning on page 12 of the brief of the International Exhibition Company, filed herewith.

But were the debates admissible, stronger arguments in favor of the appellees' contention could not be devised. The statement on page 28 of appellants' brief that the act passed the Senate with the understanding claimed by him is not supported by the facts. The subject was exhaustively debated there, and that body refused to pass an amendment which provided that the United States should be paid before the stockholders received their capital. There was no debate whatever in the House. The amendment was introduced by the honorable member from Illinois, and immediately passed.

Lastly, as to appellants' contention that the distribution of funds ordered by the court below is contrary to law and equity (page 25).

The equities, if any exist, would seem to be rather against permitting the expense of a national undertaking to fall entirely upon a few private individuals, who derive neither advantage nor profit therefrom, and who, moreover, even if successful here, will not receive the full amount of their subscriptions, made in reliance upon the honor of the Government.

WM. HENRY RAWLE,
B. WILLIAMSON,
For Appellees, Patterson et al.

No. 988.

Supreme Court of the United States.

George Eyster, Assistant Treasurer of the United States at Philadelphia,

vs.

The Centennial Board of Finance, Joseph Patterson, Henry Lewis, John Gill, The National State Bank of Camden, The International Exhibition Company, and the State of New Jersey.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF OF ARGUMENT

ON BEHALF OF THE

INTERNATIONAL EXHIBITION COMPANY.

ROBERT N. WILLSON,
Counsel.

Allen, Lane & Scott, Printers, 233 South Fifth Street, Philadelphia.

In the Supreme Court of the United States.

No. 988.

George Eyster, Assistant Treasurer of the United States at Philadelphia, Appellant,

vs.

The Centennial Board of Finance et al.

October Term, 1876.

BRIEF FOR THE INTERNATIONAL EXHIBITION COMPANY, ONE OF THE APPELLEES.

The real question which is now before the court for final decision is, simply, what is the correct interpretation to be given to the first proviso in the act of Congress of February 16th, 1876?

By the former part of the act an appropriation of $1,500,000 had been made, in the usual language of appropriations, to the Centennial Board of Finance, "to complete the Centennial buildings and other preparations." The proviso referred to, however, reads: "*Provided,* That in the distribution of any moneys that may remain in the Centennial Board of Finance, after the payment of its debts, as provided for by the tenth section of the act of Congress approved June 1st, 1872, incorporating said Centennial Board of Finance, the appropriation

hereinbefore made shall be paid in full into the Treasury of the United States, *before any dividend or percentage of the profits shall be paid to the holders of the said stock.*"

The material portion of the tenth section of the act of June 1st, 1872, to which the proviso makes reference, is as follows:— "That as soon as practicable after the said Exhibition shall have been closed, it shall be the duty of the said corporation (the Centennial Board of Finance) to convert its property into cash, and, after the payment of all its liabilities, to divide its remaining assets among its stockholders *pro rata*, in full satisfaction and discharge of its capital stock."

The act just quoted from was enacted for the purpose of creating a corporation, which it named the Centennial Board of Finance, with such powers as would enable it to raise the funds and hold the property requisite to carry on the Centennial Exhibition, which had been provided for by the previous act of Congress of March 3d, 1871.

The said Exhibition having been closed, and the assets of the corporation just referred to having been converted into a sum of money which leaves a balance, after the payment of its debts, of about two million dollars, the present controversy arises between the United States and the stockholders as to their respective rights in the distribution of the said balance.

In short, the claim of the United States may be said to be that the whole of the sum of $1,500,000 appropriated by the act of February 16th, 1876, before referred to, shall be paid into its treasury, before the stockholders shall receive any part of it. On the other hand, the stockholders claim that the United States must be postponed in the distribution of the said balance until they, the stockholders, shall have received the amount of their capital stock.

Though the principles which must decide this controversy would not be at all affected by the sufficiency or insufficiency of the fund in hand to reimburse the stockholders for the full amount of their respective shares of stock, the fact is that it is not adequate for their full payment.

In proceeding to construct a skeleton for an argument in favor

of the position taken by the stockholders, the fact is apparent that the opinion, which was filed in this cause in the Circuit Court, really covers the whole ground of the controversy and leaves almost nothing to be advanced, which would be of profit to the appellees or of assistance to the court.

This opinion will be found at folio 17 of the record, and the court is respectfully referred to that as the best exposition of the stockholders' claim which can be presented.

The legislation of Congress with reference to the Centennial Exhibition, prior to the act of February 16th, 1876, as will appear by reference to the acts on the subject, which are printed in the book presented on the part of the Government, show, beyond the possibility of question, that the Exhibition was from its inception a *national* enterprise and under the supervision of the Government of the United States. From the original appointment of the commissioners to the invitations of the General Government to the other nations of the world, and from that point to the final report of the Commission yet to be made, the evident intention of this legislation was to maintain the national character of the Exhibition as a prominent feature. It is true that, in the early history of the matter, Congress seems to have endeavored to frame its enactments in such a manner as to appropriate all the glory of success to the nation, and to leave the possible shame of failure and the whole financial risk and burden to such patriotic citizens as might become interested in the movement. Hence, the provisions in the acts of 1871 and 1872 to the effect that the United States should not be responsible for any of the expenses connected with the Exhibition. When, however, the success of the enterprise was assured, and Congress was advised that the sum of $1,500,000 was needed "to complete the Centennial buildings and other preparations," it seems to have assumed a different and more suitable attitude, and in a new spirit it appropriated the money for the purpose.

It is true that this appropriation was not absolute, by reason of the proviso which has already been cited from the act of February 16th, 1876.

It will not, however, be contended that there is any other

Now, applying these principles to the matter in hand, it will be observed that there are no words in the act of 1876 *expressly* repealing those provisions of the act of 1872, which gave to the stockholders of the corporation the right of distribution among themselves, after the payment of the debts.

Further, there are no words in the later act which put the United States in the position of a *creditor* of the corporation, in the ordinary sense. On the contrary, she is postponed to the general creditors and excepted from the class of "liabilities" or "debts" to which the tenth section of the act of June 1st, 1872, refers, by the very language of the act of 1876, which provides, as before noticed, that the appropriation shall be repaid in the distribution, *after* the payment of such "debts" or "liabilities." At what point in the distribution the repayment should be made depends, of course, upon the construction to be given to the proviso.

It is, certainly, only *after* these debts are paid that the United States can come in upon the fund. Besides, the exclusion of the claim of the Government from the "debts" or "liabilities" which were directed by the tenth section of the act of 1872 to be paid before distribution should be made among the stockholders implies that Congress did not consider this claim a *debt*, in any sense. In truth, as has been already shown, unless there is something in the proviso which alters its character, the appropriation was nothing but a gift to the corporation. It cannot, therefore, properly be said that this proviso was inserted in the act to postpone the Government to the other creditors. The better statement would seem to be that it was inserted to prevent the gift from being absolute *as to the stockholders*, after they should receive the full amount of their capital stock, when they would cease to be meritorious claimants as against the Government.

There being, then, no express repeal of the provision in the act of 1872 in favor of the stockholders, and nothing which put the claim of the Government in the category of "debts" or "liabilities," where is the violent and controlling implication in the proviso under consideration, which would justify such an

interpretation of the act of 1876 as would deprive the stockholders of the rights which the act of 1872 expressly gives them?

The controversy at this point turns upon the construction of the words "dividend or percentage of profits."

To support the position taken by the Government, it is necessary either to separate the word "dividend" from any connection with the words immediately following it and then interpret it as meaning *any aliquot share*, or to treat the terms "dividend" and "percentage" as synonymous, and in that case, to translate the other word "profits" into *assets*, *funds*, or *moneys*.

Now, it is contended that either of these constructions is forced and unnatural, and, therefore, contrary to the true standard of the interpretation of statutes.

If, as in the first alternative just mentioned, the word "dividend" is taken as applying to a different subject from what is described by "percentage of profits" and as meaning *any aliquot share*, not only is the word made to cover a portion of principal or capital invested, which is not its usual meaning, but such an interpretation makes the additional words altogether redundant and superfluous. With the signification supposed, the word "dividend" would include all possible cases of distribution among the stockholders, and, of course, a distribution of "percentage of profits."

If they would not be entitled, under this construction of the term "dividend," to a share of the capital, they certainly could not be to a share of the profits. Why, then, in that case, were the words "percentage of profits," so unnecessarily inserted?

If, moreover, the term "dividend" were made to bear the extremely forced, and, it is claimed, unparalleled construction of referring only to the capital, the redundancy of the following words is equally apparent, for the reason that the repayment of the appropriation could not, in that case, possibly encroach upon the profits. The amount of the capital stock far exceeded the appropriation.

Such ignorance of the use of language ought not to be imputed to Congress, unless it cannot be avoided, and any reasonable

interpretation should be adopted which would remove the necessity.

The other alternative involves a still greater absurdity.

The word "profits" has a well-settled meaning. It refers to returns over and above an amount expended or invested. If it is proposed to arrive at the profits of a continuous enterprise, it is only necessary to consider the capital invested, so far as interest upon such capital is concerned. But when the object is to reach the profits of a single venture or undertaking, it is necessary to take into the calculation the entire amount of the capital, as such, and the gain or increment upon that, after the payment of the debts and expenses, will be the profits.

The investments made by the stockholders of the Centennial Board of Finance were of the nature of such a single enterprise. That corporation was not created for a long-continued existence for the periodical advantage of its stockholders. The act of 1872 in very terms conferred its corporate being only until the object for which it was formed should be accomplished, and provided for the winding up of the corporation and the distribution of its assets, as soon as this purpose was effected and its debts were paid. Whatever sum there might then be for distribution, in excess of the amount of the capital stock, would be the "profits" of the enterprise. What else would or could be the *profits* of the Centennial Exhibition if not this excess, and will it be claimed that it was either improbable or impossible, when the act of 1876 was passed, that such profits would be realized? It, therefore, appears that, when that act was passed, there was a natural and relevant subject to which the word "profits" would apply, and it would be a strange construction, which would distort the word so as to make it apply to a fund insufficient to make good the amount invested, even if such a use of the term were permissible under any circumstances. It is contended, however, that such use is unprecedented. To interpret the word as equivalent to "remaining assets," in the case in hand, would be a most violent construction. The mere fact that these assets were derived from the only contemplated source of income, viz., admission fees, which is true only in part,

would no more make the net result, when it failed to replace the capital invested, *profits*, than would an analogous state of things turn into profits the amount realized in any business venture, under similar circumstances, which will hardly be contended. In point of fact, however, a considerable portion of the assets for distribution was derived from the sale of buildings and other property belonging to the corporation.

For the reasons suggested, the supposed construction of the term "profits" would seem to be forbidden by elementary rules of the interpretation of statutes.

In opposition to the views urged on behalf of the Government, it is contended that the clause in question should be interpreted so as to make the words "dividend" and "percentage" synonymous, each being qualified or explained by the expression "of profits." This is claimed to be the natural, and therefore, if for no other reason, the true construction. Giving to the word "profits" the meaning already contended for, the whole clause would be clear and would conform to the nature of the subject to which the statute related. Every word would thus have its place and part in the sentence, without violent forcing or unusual redundancy or repetition.

The two acts of 1872 and 1876, which are clearly *in pari materia*, would then both be capable of full execution.

On behalf of the stockholders, it is claimed that it is most natural and reasonable to read the act of 1876 as showing that though the United States, in the words of the act, assumed no liability for "*any payment in addition to the foregoing sum*" of $1,500,000, which she appropriated, she yet intended to allow the stockholders to receive back the amount of the capital stock held by them, before she should recover any portion of the money so appropriated by her to the Exhibition, which was national, not only in its original conception, but in its conduct and principal advantages, and which, therefore, was, presumptively, to derive its financial support from the Government, primarily and chiefly.

Unquestionably, the act just referred to gave the Government a priority over the stockholders, so far as any division of the

profits of the Exhibition were concerned. This was the purpose of the statute, and only this, it is claimed.

That such profits were not realized makes no difference, of course, with the rights of the parties. The meaning of the act was fixed when it was passed, and cannot be affected by subsequent events.

A further examination of the act of 1876, in a somewhat different light, will, it is believed, make it clear that the expressed intention of the enactment is as just stated.

Reversing the order of the parts of the sentence, it will be seen that the proviso in question directed that "the appropriation hereinbefore made shall be paid in full into the Treasury of the United States, before any dividend or percentage of the profits shall be paid to the holders of said stock, in the distribution of any moneys that may remain in the treasury of the Centennial Board of Finance, after the payment of its debts, as provided for by the tenth section of the act of Congress, approved June 1st, 1872, incorporating said Centennial Board of Finance."

It is plain that the meaning of this is that the repayment to the Government shall be made, if made at all, *in the distribution which the tenth section of the act of 1872 provides for, after the debts of the corporation are paid.*

Now, what is the distribution which that section contemplates? Clearly, a distribution among the *stockholders.*

The language of the section referred to is, "That as soon as practicable after the said Exhibition shall have been closed, it shall be the duty of the said corporation to convert its property into cash, and, after the payment of all its liabilities, to divide *its remaining assets among its stockholders in full satisfaction and discharge of its capital stock.*"

It is "*in*" or in the midst of, such a division that the United States must come for its money, or not at all. If the position of the Government is correct, however, there would be no distribution among stockholders, in case the balance of assets had not exceeded the amount of the appropriation, and the money would not in that event be repaid in such a distribution. But Congress

must be presumed to have had such a state of things in contemplation, and to have chosen the language of the act intelligently with reference to it. All statutes ought to be interpreted with relation to what should reasonably be inferred to have been in the minds of their framers. When, therefore, the act in question was passed, with the distinct provision that the United States should come upon the fund *in a distribution among stockholders*, it would seem that the primary thought and purpose were that there should be such a distribution, and that the act should be so construed that this distribution would be made, under any condition of things which was naturally to be anticipated.

Now, the only construction which will secure this result is that which is contended for on behalf of the stockholders. That construction fully, pertinently, and naturally meets all the requirements of the terms used in the proviso and, in all contingencies, would secure the return of the appropriation to the Treasury of the United States *in a distribution among stockholders*, "*before any dividend or percentage of the profits should be paid to the holders of the said stock.*"

The use of the term "profits" in the proviso affords an illustration of the force of this view. It shows the appropriate discrimination in the choice of words on the part of Congress in framing the act, and marks the point where the right of the stockholders to take in the distribution would cease or be suspended, until the amount of the appropriation should be repaid into the Treasury of the United States.

The statute thus interpreted is consistent with itself and harmonious with the previous legislation.

On the contrary, if either of the words "dividend" or "profits" were so construed as to give the United States a priority over all rights of the stockholders, it could not be said with any propriety that the Government received the repayment "*in*" a distribution among them, but rather *before* any such distribution.

An intention to give the United States this priority would naturally have found expression in different and appropriate language.

The proviso might have read, "*Provided*, That when the debts

of the said corporation shall be paid, as provided for by the tenth section of the act of Congress incorporating the Centennial Board of Finance, approved June 1st, 1872, the amount hereinbefore appropriated shall be paid into the Treasury of the United States, before any distribution shall be made among its stockholders."

If such had been the language, the present case would not now be before the court. The intention would then have been expressed in suitable terms, in favor of the United States.

It is reasonable to infer that Congress would have adopted some such language, if the purpose had been as contended for by the Government.

It appearing, then, that there was an appropriate and direct mode of expressing an intention that the United States should have a priority to the stockholders under all circumstances, which Congress did *not* adopt, and that the language actually employed points, by natural interpretation, to her priority in a distribution among the stockholders only as to the *profits* of the enterprise, and, further, that such a construction effects a complete harmony among all the statutes on the subject, the conclusion would seem to follow by necessity, under elementary rules of construction, that the proviso in question should be so construed as to sustain the decree given in the Circuit Court.

With reference to that portion of the brief presented to the court on behalf of the Government, which endeavors to base an argument upon the debates in Congress while the act of 1876 was upon its passage, it is sufficient to cite the recent decision in United States *vs.* Union Pacific Railroad Company, 91 U. S., 72.

In that case the court said, "In construing an act of Congress we are not at liberty to recur to the views of individual members in debate nor to consider the motives which influenced them to to vote for or against its passage. The act itself speaks the will of Congress, and this is to be ascertained from the language used."

The eminent soundness of such a principle is perceived at once, when it is considered that a comparatively small portion of those

who legislate usually take part in the debates, and that there is no possible test by which it can be ascertained that the silent majority agree in motive or opinion with the loquacious minority. Doubtless, in many cases the fact is just the reverse.

Therefore, even though the court, disregarding the standards of its own making, should examine the debates in Congress while the act of 1876 was under consideration, and should find that sentiments were uttered in such discussions which would sustain the position now taken by the Government, the fact that opinions of that character were expressed would afford no safe guide to the views which actuated the great mass of the legislators in their action upon the statute now before the court for construction.

There can, therefore, be nothing to justify the assertion made on behalf of the Government, that the bill passed the Senate with the understanding that the word "dividend" meant a division of the capital stock.

The fact is believed to be the direct opposite of this statement, so far as the majority was concerned.

Besides, how could the debates in Congress indicate the understanding of the President, whose approval gave the bill its statutory life?

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